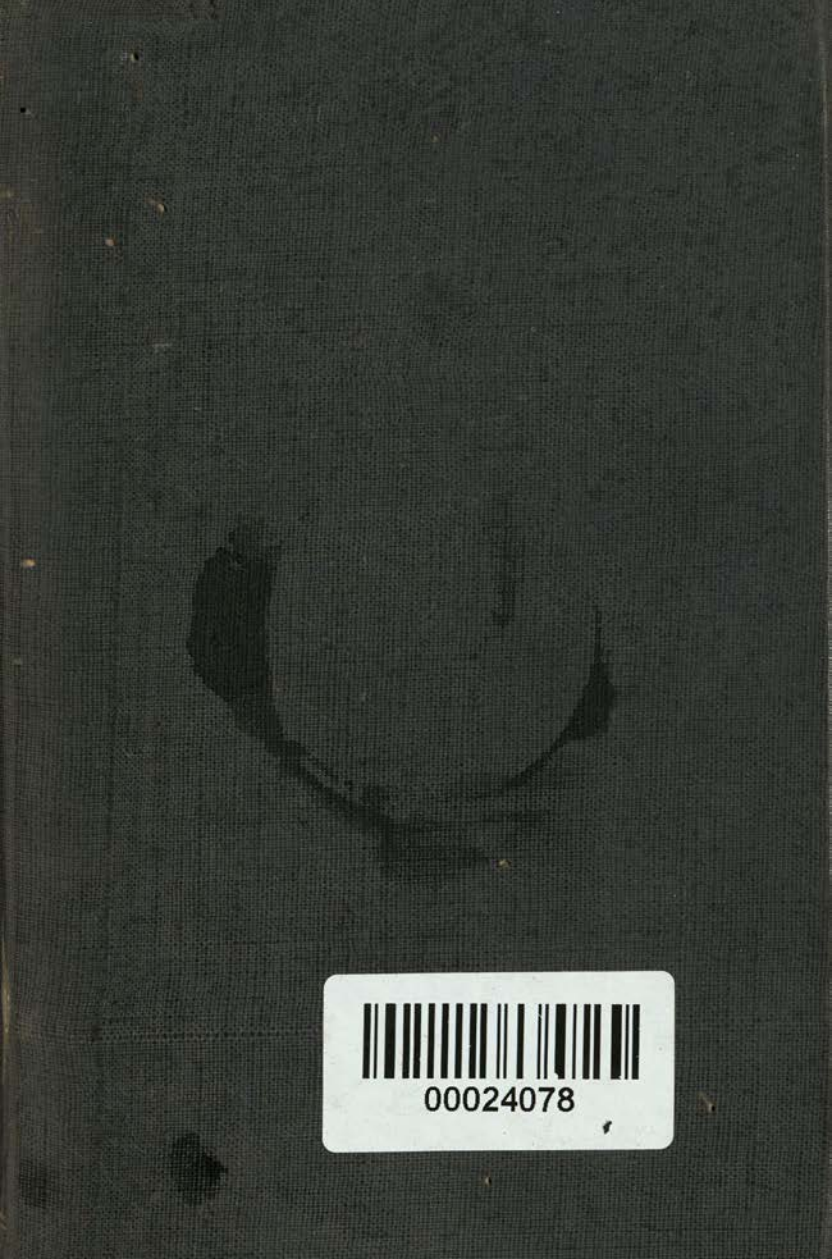
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EARLY SKETCHES

OF

EMINENT PERSONS

BY

JAMES WHITESIDE,
NOW LORD CHIEF JUSTICE OF IRELAND.

EDITED,
WITH NOTES,
BY

WILLIAM DWYER FERGUSON, LL.D.

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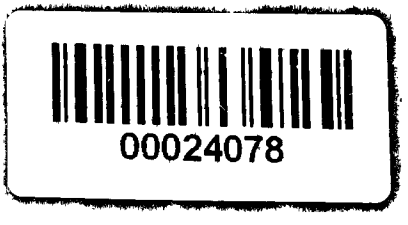

PREFACE BY EDITOR.

THE following Sketches, written many years ago,* chanced to fall in my way during the last summer. I read them, probably, with a peculiar interest, as the early productions of a valued and distinguished friend, with whom it had been my privilege to be associated, in many affairs of public business, which were to me works of cordial sympathy and hearty co-operation.

The Sketches seemed worthy of being collected, and preserved in some more permanent

* Most of the Sketches were published in an Irish periodical, "The National Magazine," edited by my fellow-citizen, Philip D. Hardy, Esq., one in the "Dublin University Magazine," the rest appeared in other Irish periodicals.

form—if for nothing else, as portraits of individuals, who occupied a large space in the public mind, and were, more or less, eminent in their day. Some of the persons sketched—such as Denman, Mackintosh, Earl Grey and Lord Plunket—have established their names in the enduring record of history, and have been already portrayed by other hands. Still, it seemed to me not without interest to observe how these men were viewed, in mid-career, by a watchful student, destined afterwards to an honourable career of his own. The names of others—Scarlett, Wetherell, Wilde—are perhaps, less generally known or remembered by the present generation. Others, again—such as Burton and Burrowes—were men who though not absolutely in the foremost rank were amongst the most eminent and honoured members of the Irish Bar; and as they had not been included in the admirable sketches of Sheil and Curran, the reader will, doubtless be glad to have their characters, as descri

in these pages, rescued from that oblivion which is the ordinary lot of all but the greatest men.*

As to the intrinsic merits of the Sketches, the reader will judge for himself. To me, at least, they seemed lively, natural, and picturesque representations of noteworthy characters, as they presented themselves to the observation of an earnest and discriminating young man. They may not be samples of what we might expect from the trained intelligence or matured judgment, or enlarged experience, of a successful lawyer, senator, or judge. They are to be estimated by a different standard, and taken simply as the fresh effusions of a student training himself for the battle of life, and fastening his attention steadily upon men of distinguished ability and high moral excellence, as the best models of imitation within his reach.

* An interesting memoir of Mr. Burrowes, written by W. Burrowes, Esq., has been published since these Sketches were written.

The sketch of Scarlett, as the skilful advocate and consummate legal tactician, is happily drawn by one who evidently followed him from Court to Court, and from Nisi Prius to Banc, with searching and scrutinizing eye; and it affords a very correct estimate of the value of such accomplishments as Scarlett possessed, remarkable as they were, unaccompanied by profound learning or sterling genius. Sir James Scarlett's subsequent career, when raised to the Bench, as Lord Abinger, fairly verified the forecast of his mental powers, made at a time when he was in the enjoyment of an extraordinary professional reputation.

Denman, represented as the most ardent, independent, and eloquent member of the English Bar, had not been then (in 1830) as truly appreciated by the public as by the writer of his sketch. The nobility and firmness of his character, as evidenced by his future conduct on the Bench, were scarcely recognised or prognosticated.

The amusing Sketch given of Sir Charles Wetherell, is valuable, as being, perhaps, the only authentic record, by an eye-witness, of an extremely eccentric, but honest, able man, whose virtues and abilities exceeded his discretion and tact, and who, if he had possessed the ordinary pliancy of the politician, might have attained the highest judicial office in England.

The name of Sir James Mackintosh recalls to the mind of the scholar recollections of extensive learning, instructive eloquence, and large-hearted philanthropy. The very agreeable portrait of this distinguished man, was drawn before the Dissertation on the progress of Ethical Philosophy had been in the hands of the general public—a work by which his already great reputation has been so much enlarged. Mr. Whiteside was too young to have listened to the lectures on the law of nature and of nations, which attracted and delighted Mr. Pitt, Mr. Percival, and others of the statesmen of that period. But he had, doubtless, studied and

admired the beautiful introductory essay, which is all that remains of these lectures ; and it was his good fortune, afterwards to meet the writer face to face at the London University, to which Mackintosh sometimes resorted, to hear the lectures of his friend, Professor Amos,* delivered to the first law class that assembled at that institution. Amongst the students were some few Irishmen, including the Ex-Chancellor, Sir Joseph Napier, and Mr. Whiteside ; and they, doubtless, watched the benevolent countenance of the "old man eloquent," followed his steps to the House of Commons, and listened with attentive ears to his unanswerable arguments in favour of the abolition of the punishment of death for

* Professor Amos was the friend of Brougham, Denman, and Mackintosh. He had been a Fellow of Trinity, and Downing Professor of Laws in the University of Cambridge, and afterwards in the University of London, and subsequently he succeeded Lord Macaulay as a Member of the Supreme Council of India. On his return from India, he published a curious book, entitled "The Ruins of Time, exemplified in Sir Matthew Hale's History of the Pleas of the Crown." He translated into English "Fortescue de laudibus legum Angliæ," with valuable notes on constitutional subjects.

secondary crimes, such as forgery; and one of these young men has given his warm impressions of what he saw and heard in language frank and cordial. It afterwards happened to become his duty, when Attorney-General for Ireland, in 1858, to submit to Parliament measures of the same kind as those which were the objects of Mackintosh's life and dearest wishes—namely, for the amendment of the Criminal Law, and with a view that England and Ireland should be governed by the same laws, and the severity of the law of Ireland, in certain cases of capital felony, mitigated to the more merciful standard of the law of England.*

The characters of Earl Grey and Lord Denman are drawn with great justice; and, I may add, with no small degree of generosity of sentiment, towards men belonging to a different school of politics from that of the writer. That of Lord Plunket was written at the time when

* See Criminal Law Consolidation Acts, 24 and 25 Vict.; edited by P. C. Greaves, Esq., Q. C.

his elevation to the office of Lord Chancellor was sharply criticised, and held up as an insult to the Protestant party and a triumph to the Roman Catholics, of whom he had been the foremost champion; and it is to the credit of a young man, to have so early emancipated himself from the narrow prejudices of class and party, which were so rife and rampant in Ireland at the time. I have ventured to add, by way of notes, to this sketch of Lord Plunket, something regarding his judicial career, which had only commenced when the sketch was written; and, if truth and justice have withheld me from according to it the exaggerated praise bestowed by others, I trust that there are few Irishmen who appreciate more highly than I do, Lord Plunket's manly and lofty independence of character, the sagacity and moderation of his conduct, or the remarkable eloquence of his speeches in Parliament and at the Bar.

The sketch of Mr. Peter Burrowes is somewhat of a different nature from the others.

A warmer and more tender sentiment pervades it, derived, doubtless, from personal recollections of, and familiar intercourse with, the kindly old man, whose memory was stored with traditions of the stormy times of the Irish rebellion, and particularly of the romantic history of Robert Emmet. Mr. Burrowes was himself a venerable and interesting relic of the last days of the old Irish Parliament.

The writer's treatment of Mr. Justice Burton, and the conception and estimate of his character, I confess, has interested me more than his treatment of any other person described. Judge Burton happened to be the only one of the subjects of the sketches, who had come under my personal observation. At the time I speak of (1840), he had nearly run his course; but, from reading his reported judgments, and observing his calm, courteous, and dignified demeanour on the Bench, I was more favourably impressed by him than by any public character of the time.

All the other sketches in this volume were written by a student at chambers; that of Mr. Justice Burton was drawn by a barrister, who had gone the circuit on which Burton happened to be the presiding judge, once or twice. That circuit (the Connaught) was then, as it was in later years, when I had the honour to belong to it, very closely preserved; and, probably, the impartial dispensers of circuit briefs may have afforded Mr. Whiteside, before he betook himself to the more open and enlarged field of the North-East Circuit, sufficient leisure to study Judge Burton on the Bench; and the sketch drawn is a remarkably interesting one—one which those who knew the subject of it, will recognize and appreciate, as a faithful portrait of a learned and upright judge, who was an ornament to the Irish Bench, and whose character and example, it is hoped, will not soon be forgotten. The writer, in contemplating and portraying Mr. Justice Burton, has set forward a high standard of judicial excellence. I have ventured, with deep

feelings of respect for the office of a judge, and a lively concern for the welfare of the Bar, to notice circumstances in recent times, which appear to me, unfavourable to the maintenance of this high standard; and I doubt not that every thoughtful reader, will concur in deploring as almost a public calamity, any combination of events by which the independent spirit, high moral tone, and character for quiet perseverance and learning of the honourable profession of the Bar, shall be lowered, in order to meet the supposed exigencies of Government by party.

Of the last sketch, "The Irish Exchequer as it was in 1829," it should be stated that, though latest in its order here, it was the earliest in composition, and, accordingly, it partakes more of the light and lively characteristics of the young student, than the more sober and reflective sketches that precede it.

I have collected these Sketches, as an exercise of friendly interest and personal gratification, but

not without hopes that they may be agreeable and instructive to others ; and especially to the student of the law, who, entering on the difficult path of professional life, may entertain feelings possibly akin to envy, when regarding men eminent in this day, and occupying high position, whom he may consider to be the last of fortune's favoured children ; but in respect of whom, if he could but unroll the record of time, and look back upon their student life—their painstaking and self-denying labours—their careful and anxious pursuit of every opportunity to train their minds and store their memories with the examples and the wisdom of the best men of their time, and of antiquity—he might learn the lesson of how much of a man's destiny is committed to his own keeping, and that fortune's favourites attain less of the good things of this life, than indolence and self-indulgent ease are apt to lead people to suppose.

In discharging the duty of an editor, I have endeavoured to supply, by way of notes, such

information as may be necessary, to connect the narrative of the Sketches with the subsequent events in the history of the individuals mentioned. In doing so, it is scarcely necessary to say that I am exclusively responsible for every thing contained in the Notes. I only hope that they may not be found, by their dulness, to spoil the effect of the animated Sketches to which they are attached.

48, MOUNTJOY-SQUARE.
31*st May*, 1870.

CONTENTS.

	Page
1. Sir James Scarlett (Lord Abinger),	1
2. Mr. Denman (Lord Denman),	21
3. Sir Charles Wetherell,	46
4. Sir James Mackintosh,	77
5. Earl Grey,	110
6. Mr. Sergeant Wilde (Lord Truro),	135
7. Lord Plunket,	157
8. Mr. Peter Burrowes,	212
9. Mr. Justice Burton,	238
10. The Irish Exchequer as it was in 1829,	268

ERRATA.

Page 60, line 6, omit "for."

„ 154, „ 17, instead of "quandam" read "quondam."

EARLY SKETCHES.

SIR JAMES SCARLETT,

(LORD ABINGER).

March, 1830.

It is a difficult task to pourtray a character like that of the English Attorney-General, presenting nothing striking or uncommon, none of those lofty attributes which single out an individual from other men, and hand him down to posterity and fame. There is no prominent feature in Scarlett's character, which you can lay hold of,—like a smooth and polished globe it eludes your grasp; perhaps I am wrong, and many, doubtless, will be ready to exclaim: "impossible that he could have attained such professional eminence without the aid of high abilities and extensive learning"—this is worth

investigation. To me the most remarkable circumstance concerning the gentleman in question is, that there seems to be nothing remarkable about him. Whatever merit he possesses lies in this, that he has reached the top of an arduous profession, without appearing to take the slightest trouble about the matter.

Anxious to see and hear the man who succeeded Erskine as leader in the King's Bench, I paid an early visit to that court. In the centre of the seat appropriated to King's Counsel, behind a pile of briefs, sat Mr. Scarlett, a portly, comfortable-looking personage with a red face, who seemed to live well and to have a keen relish for all the good things of this world—an admirable subject for an alderman, but exhibiting not the slightest symptom of that lassitude and debility which not unfrequently results from laborious occupation, or from long and painful study. It would be impossible to place in juxta position two individuals more dissimilar in mind and person, than Messrs. Brougham and Scarlett; the former looks, and generally is, buried in profound thought, and is, moreover, as thin as though he lived on the oaten cakes of his own dear Scotland, while the Attorney-General's plump and ruddy cheeks, amply testify that he has shared in the luxuries of London, and afford ground for inferring

that he is one of those easy-minded individuals who have never thought long or deeply on any subject. I watched him attentively—he had a brief in every motion—with self-possession bordering on *nonchalance*, with a subdued tone, and in an easy colloquial, and rather familiar manner, he addressed the Court, obtained what he wanted, opened another brief, and so on, till he got through the entire bundle, and when he had concluded, looked just as fresh as when he began. I confess I then thought him a very common-place sort of person, and was astonished that this was the man deemed fit to succeed Erskine, and as some said to eclipse him. I felt indignant at the idea of a comparison so derogatory to that great man; but then, thought I, this is term—the business of which requires legal argument, and practical knowledge, but affords no scope for the display of brilliant eloquence and wit, or of those shining qualities of mind, the exertion of which trials at Nisi Prius more frequently and appropriately elicit and require. Throughout term, however, Scarlett was, as I have endeavoured to describe, going through his vast business without the slightest bustle or confusion, stating facts and dates, and citing cases with marvellous accuracy. His eyes constitute the only peculiarity in his features, they are small and sharp,

never more than half open, and in a perpetual twinkle. These are lawyer's eyes, quick and knowing; and these, the subject of this sketch, transfers with infinite address, from the cosy Justice Park from one end of the bench to Justice Bayley, cast by nature into a lawyer, at the other; with these wincing eyes he reads the well-known countenances of the judges, anticipates every objection, and meets Justice Bayley half way with volume, case, and page. Justice Littledale, when he has finished his little bag of dry toast, sometimes ventures upon a gentle admonition, suggesting his modest opinion in a quiet, unpretending way, while Lord Tenterden rarely interrupts "Sir James" in the progress of his argument, but listens with complacency and attention.

When the sittings at Nisi Prius commenced, I frequented the King's Bench, and had ample opportunity of observing the habits and peculiarities of this wily advocate. The extent of his practice in this branch of his profession is enormous; the labour, also, of senior counsel in Westminster, in each individual case, is infinitely greater than in Dublin; the leader accomplishes every thing—states the case, examines, cross-examines, and finally speaks to evidence; a junior can find no opportunity to show off; he may open the pleadings or suggest a case in point to his leader in a

modest whisper, and there his display must end. At first I was almost disgusted at the uniformity of Scarlett's manner. He seemed inacapble of excitement —breach of promise, seduction, defamation, assault, insurance, and bills of exchange, succeeded one another, and were by him disposed of in the same easy manner; he never either rose or sank—never employed a passionate expression—never evinced the slightest emotion—never indulged in tenderness of speech—never attempted to stir the sympathies, or reach the hearts of jurors, yet, strange to say, he invariably obtained large damages. Thenceforward I admired him as a skilful and successful advocate; my admiration was confirmed by contrasting him with his legal brethren. Denman and Brougham are staggered by a point of law, and will at times come to a full stop from a break in their evidence—even the eagle-eyed Gurney fails in the management of a rotten case, from a too palpable anxiety and a suspicious earnestness. In cases of such a description it is, that Scarlett stands unrivalled, not only among his contemporaries, but I honestly believe, above all the lawyers that ever lived. Nothing can disconcert him even for an instant, no unlucky accident disturbs, no unexpected evidence discourages him; the presence of mind he displays on these critical

occasions is truly wonderful. By an uninitiated spectator his tact is neither seen nor understood, simply because it is the very consummation of art; but the attornies understand it—they know full well, that where any other man would meet a nonsuit, Scarlett will gain a verdict. He treads on dangerous ground with softness, and handles every fact with Jesuitical dexterity. In the mildest manner, and with his professional smile, he assures his lordship that his learned friend, Mr. Brougham, is totally mistaken with respect to the case cited from Barnewall and Creswell. Lord Tenderden doubts Sir James's law—he gently perseveres, and having at last persuaded that most learned and honest judge that there is a question to go to the jury, his triumph is complete. He has got over the scruples of the judge—the scruples of the jury he can easily satisfy. He coils himself into the details of his case—explains just what he thinks necessary for the jury to know—glosses over all the rest—anticipates their verdict, because "he well knows they are rational, sober-minded men"—communes with them as an old friend, in the most unembarrassed strain imaginable; and they, imposed upon by the plausibility and apparent frankness of his manner, find according as he bids them. No one who has formed his notions of a Nisi Prius lawyer

on the model of Wallace, O'Connell, or Goold, can have a conception of Scarlett. Take the opposite of Goold in every particular, and it might give you some slight idea of his manner. He is sly and calm as Goold is loud and overbearing. How our lawyers do shout and storm at a witness—this may sometimes do in Ireland; but I am convinced Scarlett's method is infinitely more efficacious. He throws a witness completely off his guard by his mildness—elicits all his case requires, and not a scintilla more. In his replies he excels; it is here the sagacity and craft of the lawyer produce the most decisive effect. He culls out, on the moment, all that is material, from the confused evidence of a host of witnesses, never wading through wearisome and useless details; he converts suspicions into certainties, and connects every the minutest circumstance which can illustrate or assist his case, evincing a tenacity of memory which is perfectly surprising. His action is peculiar; he never gesticulates, nor does he excite clouds of dust by striking the table with vehemence and fury. He employs his right hand in a little circle, never extending his arm to its full length, as ever and anon he beckons the jury with two fingers, as if he wished to speak with them behind the door. Such I have observed to be his invariable action. Now

that I have endeavoured to enumerate those qualities, which he does possess, I ought to mention those which he does not. Well, then—he has neither fire, nor energy, nor eloquence, nor passion, nor wit, nor humour, nor pathos. His excellence consists, in tact in the management of causes. It is vain to expect from Scarlett a single observation calculated to instruct the understanding, to delight the fancy, or to touch the heart. Even though the subjects admitted, he could not indulge in wide, enlightened, or philosophical reflection. He thinks—he *can* think only of plaintiff and defendant; he wants a verdict, and nothing but a verdict. He is eternally the same; his sympathies seem deadened within him; the misfortunes and sufferings of his client cannot divert him from his accustomed course; the exposure of unexampled villainy cannot fire him with honest indignation. He is a composition of art—there is nothing natural about him. His voice is measured within a certain compass, his action tutored; and sooner might one expect melodious music from an owl than an ebullition of natural feeling from the lips of Scarlett.

I attended the trials concerning the liberty of the press, of which the Attorney-General would needs be thought a zealous defender, imagining that, possibly, on such an

occasion I might hear something eloquent and luminous; but no, the opening speech, as a piece of oratory, was thin and feeble, delivered in the usual soft and unimpassioned tone. The only difference perceptible in his manner was, that it had increased in arrogant familiarity with the jury. He gave them to understand that their verdict was expected. His reply to Mr. Alexander's defence was cold and unfeeling, and I own I could hardly repress the indignation I felt, when I heard such a man venturing to confess his hostility to the press, and avowing his determination to regulate it in all its branches, periodical and otherwise. What would I have given for the fire and genius of a Curran, to uphold the dignity of the press, and strike terror into the heart of the Whig and Tory Attorney-General! Mr. Alexander was most injudicious in undertaking his own defence. He wanted both the talent and judgment requisite for so arduous a task. Why did he not commit his case to Denman, the most ardent, independent, and eloquent member of the English Bar? *He must* dislike Scarlett, because it is natural for generous and unsuspecting natures to dislike their opposites.

On that libel for calling Wellington a dangerous minister, which is the case to which I especially allude, where the jury showed by their qualified verdict that

they were disinclined to convict, Denman would have triumphed over his sneering adversary; his manly eloquence would have warmed the hearts of the coldest of his hearers; his ardent spirit would have communicated to the jury a portion of its own fire, as he would have declaimed in defence of the dearest rights and privileges of Englishmen. Sir James is an old hand at prosecutions against the press. He won unfading laurels as Attorney-General for the Bishop of Durham, in the prosecution of Ambrose Williams for a libel. His speech then was prefaced with a similar exordium to that delivered in Alexander's case, in praise of a well-regulated press; but Williams was lucky in having secured the splendid talents of Brougham, by whom he was gloriously defended. His was a tremendous speech; he crushed Scarlett, and poured out a tempest of sarcasm such as never before fell from the lips of man. I would strenuously advise all who wish to form a correct opinion of the merits and abilities of these two eminent persons to read the report of that interesting trial. A single passage from Brougham's speech, in reply to Scarlett's hollow panegyric on the blessings of temperate discussion, will be forgiven:—

"Far from my learned friend is it to impugn those rights in the abstract; nor, indeed, have I ever yet

heard a prosecutor for libel—an Attorney-General (and I have seen a good many in my time), whether of our Lord the King or of our Lord of Durham, who, while in the act of crushing everything like unfettered discussion, did not preface his address to the jury with 'God forbid that the fullest inquiry should not be allowed;' but, then, the admission had invariably a condition following close behind, which entirely retracted the concession ; provided always the discussion be carried on harmlessly, temperately, calmly—that is to say, in such a manner as to leave the subject untouched and the reader unmoved—to satisfy the public prosecutor, and to please the persons attacked."

The highest and only praise then, which can be given to the subject of this sketch is, that of being a consummate legal tactician. Outside Westminster Hall, he is a mere nobody. While the other great lawyers of the day, after discharging zealously their duty to their clients, hasten to discharge the still higher duty they have imposed upon themselves towards the public and mankind, Scarlett posts away to chambers to count his guineas and to hug his briefs. As a parliamentary speaker, he is common-place; his artificial habits totally unfitting him for a popular assembly. Were I in his situation, I would avoid the House of Commons: his

must be a seat of thorns; every night does some one of his old political friends criticise his conduct. In the debate on the Address, Mr. Protheroe, sitting in his seat, gave him a heavy hit—the example has been followed. Sir F. Burdett demolished his old friend and defender; this was the unkindest cut of all, and it affected him so sensibly, that when he stood up to reply, his voice, *they say,* faltered, and he had like to cry. Mr. Hume, too, loudly protested, "that he saw no use now in being a member of parliament, save that a man might speak his sentiments safe from the fangs of the Attorney-General." Poor Scarlett! it is somewhat unfortunate for him that his speech on behalf of Sir F. Burdett, should remain still on record, in which he denounced with so much *honest* indignation, the law of libel, and inveighed against the flagitious proceedings by which that seditious baronet was subjected to such dangerous penalties. The debate which must arise on Sir C. Wetherell's motion, will, doubtless, afford the Attorney-General much sincere pleasure in giving him an opportunity of reconciling those little inconsistencies, which ill-natured people fancy they have discovered in his character. I should mention, that on one occasion, in the House of Commons, Sir J. Scarlett was betrayed into the manifestation of strong feeling, and

into the manly avowal of bold opinions. This singular phenomenon occurred in the debate on the motion relative to the Chancellor's attack on Mr. Abercrombie, "He was (says a periodical of that day) then surprised into his own original nature, and forgetting the measured compass of his long adopted voice and manner, spoke out in a broad northern accent, and told *daring truths* which astonished the House. It is not thus, however that he wins verdicts, and compels the court to grant rules to show cause." Let him have every merit for his spirited conduct in this instance; and let his admirers inscribe his speech in letters of gold; for excepting this singular effort, I am not aware of his having written or spoken a sentence on any subject, legal or political, on which, in ten years hence, memory would delight to dwell.

His legal knowledge is more practical than profound; he possesses more of the tact of the advocate than the deep learning of the lawyer. A comical incident occurred half a dozen years back. A report was spread abroad that Scarlett was dead: all the papers of the day published characters of the deceased lawyer, which coincided to a remarkable degree in setting him down as a man of no genius, but of industrious habits and middling talents. The lawyer lived, however, to frighten his

enemies into better manners; and, doubtless, the gentlemen of the press will ask twice the next time, before they credit such afflicting intelligence. As to his chance of being remembered twenty years hence, it is not impossible that some diligent book-maker, in rummaging among the Rules of Court, or a still more laborious law student, condemned to wade through the never-ending volumes of Barnewall and Cresswell's Reports, may discover that there existed in these times a lawyer who moved many motions, that he became Attorney-General, and that his name was Scarlett.

NOTE BY EDITOR.

April, 1870.

Sir James Scarlett was appointed Chief Baron of the Exchequer in England, 1834; created Baron Abinger in January, 1835; and died 7th of April, 1844, aged 75 years. From his tact in managing juries, he acquired the epithets of the "Verdict Getter," and the "Thirteenth Juryman." His practice, mainly at Nisi Prius, produced an income stated to have been over £17,000 per annum.

Sir James's knowledge of law was superficial rather

than solid. Born of wealthy parents, he wanted in the early period of life that wholesome stimulus to exertion which men of more moderate fortune usually feel and profit by, and unhappily for his fame he neglected the golden opportunity of youth and leisure to store his mind with an enlarged knowledge of the principles of jurisprudence ; nevertheless, his marvellous tact and sagacity, and shrewd sterling common sense, in a great degree covered, if they did not compensate his defects. As a judge, the verdict this great "Verdict Getter" has himself got from posterity is, *Par negotiis neque supra.* "He presided in the Court of Exchequer for nine years without any particular distinction, and died on circuit in the discharge of the duties of his office."

Sir James Scarlett entered Parliament in 1818, as member for Peterborough, a Whig borough, in the nomination of Earl Fitzwilliam. In 1827, when a section of the old Tory party diverged towards a more liberal policy, and ventured to advocate the concession of the "Catholic claims," Sir James was invited to join and became Attorney-General in the administration of George Canning. Scarlett, on this account, like Lord Plunket, has been sometimes charged, unjustly, as I think, with political tergiversation, more particularly by Lord Brougham, at whose strong

recommendation the step was taken, according to Lord Campbell.* Canning, no doubt, had emerged from a Tory Cabinet and brought with him such men as Huskisson, Peel, and Copley (Lord Lyndhurst), but by the Tory party generally, and the Duke of Wellington their chief, he was regarded with suspicion, and notwithstanding his acknowledged eloquence and transcendent genius, described as a political adventurer. The only Government which Canning could have formed was of a composite character, consisting mainly of moderate Whigs, like Lords Anglesea, Lansdowne, and Goderich, and Mr. Lambe, afterwards Lord Melbourne. To such a Government Mr. Scarlett was not a disloyal or deserting ally.

Canning's administration had but a short—less than four months'—span, when the brilliant orator and statesman sank prematurely into the grave in the zenith of his fame. The advocate of Catholic Emancipation, Commercial Reform, a more generous foreign policy, he was yet averse from change in the constitutional distribution of power. He was, in fact, the founder of the party and policy developed by Peel, under the name of Conservatism. The Tory historian, Sir

* Campbell's Life of Lord Brougham, p. 353.

Archibald Alison, says of him*:—"He was essentially conservative and national in his feelings, and that was the secret of his otherwise inconsistent career." If we consider Sir James Scarlett, then, as a follower of Canning, we may understand how, from a moderate Whig of 1820, he may have naturally developed into a Conservative of the school of Peel in 1830. As it was, he was more loyal to the Whigs than most of his colleagues. When Lord Goderich resigned, after his short and effete administration, to make way for the Duke of Wellington, the Canning party generally, including Lord Palmerston, retained their places, but Scarlett resigned, and was succeeded by Sir Charles Wetherell. Why he resigned is not stated; but it was probably because the policy of the new Government was not favourable to the concession of the Catholic claims. In the following year, 1829, when the Duke of Wellington changed his front, and went in for Catholic Emancipation, the then Attorney-General, Sir Charles Wetherell, refusing to support it, was fain to retire, and Sir James Scarlett was naturally restored to office as Attorney-General. In the November of 1830 the Duke of Wellington himself resigned. Sir James followed the fortunes of his chief, and retired to make

* *Alison's History, continuation, vol. iii. p. 88.*

place for Mr. Denman; and on the next return of the Conservatives to office, under Sir Robert Peel, in 1834, was promoted to the office of Chief Baron of the Exchequer, in room of Lord Lyndhurst, made Chancellor. Lord Campbell tells us* that Lord Brougham endeavoured to oust Sir James Scarlett of his promotion, by offering to accept the office and discharge the duties of Chief Baron, without any salary beyond his pension as Ex-Chancellor, imagining that thereby he and Lord Lyndhurst would alternately succeed each other and exchange offices, as Chancellor and Chief Baron, during their lives, as often as their parties were respectively in office or in opposition. Lord Lyndhurst laughed at the proposal as absurd, and put Lord Brougham off with an evasive answer; and the offer was thereupon withdrawn.

If Sir James Scarlett's judicial career was not brilliant, neither can his parliamentary career be regarded as a great success. He spoke seldom, and not effectively. In the House of Commons, as the friend of Mackintosh, he gave a sincere and hearty support to his noble efforts towards the reform of the criminal law. When removed to the House of Lords, as Lord Abinger, he supported Lords Brougham and

* Life of Lord Brougham, p. 460.

Denman in their legal reforms; but, as an originator, his capacity, or his ambition, was small. His most important parliamentary exploit is commemorated by Sidney Smith's lively article in the *Edinburgh Review* (1821), on "Scarlett's Poor Bill." The object of the bill was to make the poor absolutely irremovable. The probable effects of the bill are humorously described by the witty Canon:—"If his bill had passed —he could not have passed—his postchaise in the Northern Circuit would have been impeded by the crowds of houseless villagers, driven from their cottages by landlords rendered merciless by the bill. In the mud—all in the mud—(for such cases made and provided) would have been rolled this most excellent counsellor. Instigated by the devil and their own malicious purposes, his big wig they would have polluted, and tossed to a thousand winds the parchment bickerings of Doe and Roe."

Sydney Smith, notwithstanding, concludes his article with a very warm eulogium on Mr. Scarlett, as the greatest advocate, perhaps, of his day—one who had never carried his soul to the Treasury, and said, "What will you give me for this?—as one who never touched the political Aceldama, and signed the devil's bond for cursing to-morrow what he had blessed to-day—as

one who had cast honour upon his honourable profession, and had sought dignity, not from the ermine and the mace, but from a straight path and a spotless life."

But this was written in 1821. Were the article to have been written in 1830 (the date of the foregoing sketch by Mr. Whiteside), when Sir James had become Attorney-General under the Duke of Wellington, or in 1834, when he had accepted the ermine and the mace at the hands of Sir Robert Peel, Sydney Smith possibly might have included his honourable friend in his amusing catalogue of "Modern Changes"—so precarious is the reputation of public men!

MR. DENMAN,

(LORD DENMAN).

June, 1830.

The mere bustling lawyer and the factious partizan are alike undeserving of notice; the man must be possessed of redeeming qualities, blessed with high talents, and warmed with generous feelings, nay more, he ought to have effected something towards the moral improvement and advantage of his fellow men, to warrant his being made the subject of honest and unexaggerated panegyric. I not only disclaim the notion of sketching every noisy advocate of the English Bar, I condemn the practice. Let the uproarious Nisi Prius barrister, who has nothing to recommend him save the vigour of his lungs, move on undisturbed, the glory of his narrow and noisy sphere—the idol of the lovers of loudness and confusion, and the veneration of fee-giving attorneys, by whom alone his boisterous wit will be respected, and his pert sayings had in remembrance.

Temptations beset the path of the lawyer of talent which are but too difficult to resist, and wealth and power are unhappily too often the reward of sycophancy and apostasy: lawyers are not unfrequently found to be of easy virtue and grasping desires; and memorable examples teach us that learning and subserviency may be united in the same person; we experience consequently the greater delight in contemplating the character of a lawyer in whom learning and honesty, talent and virtue, are happily blended together, conducting their possessor, by so rare a union, through his public life without spot or blemish, and free from the slightest shadow of imputation on his private character. Such is the enviable condition of the subject of this sketch who perhaps has endured less of the reproaches of his fellow countrymen, and gained more of their respect and love, than has fallen to the lot of any individual who has taken so prominent a part in the remarkable events of modern times.

Mr. Denman is the son of Doctor Denman, one of the most eminent and learned physicians of his time; from Eton the subject of this sketch was sent to Cambridge, where he was not greatly distinguished for his mathematical attainments; he bears the character of being an excellent Etonian scholar however, well read in Greek

and Latin authors, one who can repeat odes of Horace with as much facility as Sir James Scarlett can cite cases. The professional career of Mr. Denman has been successful, his name has been long before the public. But although he may have acquired practice considerable for a young barrister, I apprehend that of late years, it has not increased in proportion to his standing and experience: for this a good reason is assigned, his mind is neither so technical nor so subtle as that of Scarlett, it is not so powerful or comprehensive as that of Brougham, and perhaps a better reason still is that he has none of those *little engaging ways*, which by some men have been found more useful in procuring practice, than sound learning, commanding talents, or spotless integrity.

It has twice occurred to me, in conducting strangers to see and hear the celebrated lawyers of the King's Bench, to have been asked with eagerness, who was that gentlemanly looking person sitting next to Mr. Brougham? the feeling which prompted the question, corresponded with that which I experienced when first I had the good fortune to see Mr. Denman and to hear him speak. There is something peculiarly captivating about him, insomuch that if he rose to speak when you were anxious to depart, you would assuredly be tempted by a

single glance at his countenance and figure, to pause and listen, and when you had heard the first sentence, you would as certainly wait, with unwearied patience, till the termination of his address. It is not that he arrests the attention by the brilliancy of his language, or surprises by the boldness of his conceptions; not that he exceeds other men by the richness of his imagery, or the originality of his eloquence, but that he surpasses most men in singleness of purpose, and honesty of intention, and that consequently what he says reaches the heart, and warms the feelings of his hearers. His person is tall, his voice deep-toned, flexible and full, his manner natural and unstudied, his countenance open, prepossessing, and noble; it has something when at rest of the finely chiselled, finished appearance of a statue.

It must not be supposed that the hearer would be equally gratified in listening to Mr. Denman at all times, or that he is equally successful on every subject. A lawyer, for example, would not be impressed with a very high opinion of his argumentative powers and logical discrimination on strictly legal and technical subjects; his style is too loose, his manner too impetuous, and his mind too ardent, for the calm and cautious investigation of principles remote and difficult, and his over-anxious temper would prevent him from attempt-

ing ingeniously to reconcile conflicting decisions. On such subjects Mr. Pollock,* from his strictly mathematical education, and reasoning habit, is as much superior to him, as Pollock is his inferior in sound taste—in the charms of eloquence, and the beauties of classical knowledge.

These gentlemen, about the same standing in their profession, are each eminent in a peculiar line, but do not appear to advantage when they attempt achievements for which, by nature and education, they are unfitted. Universal genius is rare: it is reserved for a Brougham or a Plunket, to exhibit shining proofs of what may be accomplished by a combination of the highest powers of reasoning, with chaste and manly eloquence. Messrs. Pollock and Denman can be excellent in one department only: though unquestionably the subject of this sketch ranks higher as a speaker than Mr. Pollock, who, as an orator, has sunk in my estimation since I heard his defence of the "Morning Journal." I doubt if there be an individual at the English Bar who could conduct a case of this description with such complete success as Mr. Denman; he has many of the best requisites for an advocate; energetic and manly,

* Afterwards Sir Frederick Pollock, Lord Chief Baron of the Exchequer.—(Ed.)

nervous and impressive, he never suffers the attention to flag, or the subject to become wearisome; there is no insipidity, no stiffness or coldness about him: vigorous and effective, he does not approach the subject with the cautious policy of a hacknied pleader, fearful of committing little faults, but throwing himself heart and soul into his cause, he identifies himself at once with his client's interest; he does not hesitate to weigh his words, and ponder upon sentences, but grapples boldly with his subject, and unlike those declaimers who are loud only in expression, while feeble in sentiment, he delivers his opinions in language pregnant with sound sense and generous feeling, advocating the cause he has espoused with zeal and intrepidity.

That Mr. Denman's style of eloquence is not faultless I admit; but his faults are amply redeemed by great and varied and lofty excellencies, and I doubt whether even his blemishes weaken the force of his appeals, or detract much from his high merit as an advocate. The fault most commonly found with Mr. Denman is that his style is unequal; that though he soars, he sinks again; and that although he speaks with unrivalled ability, 'tis only for a time, and then he falls to the level of common men, from want of a sustaining force within him. There is, unquestionably, a

considerable inequality in his style; but for this I can offer a reason with which careful observation has supplied me, and which, I think, will be found correct. I am persuaded, then, that this inequality arises not from any deficiency of talent or want of information, but from the natural constitution of his mind, which compels him to utter his thoughts freely and unreservedly, and from a habit, too, which he cannot now conquer, of approaching his subject without a thorough previous preparation. He examines attentively the chief features of his case, but does not consider with sufficient minuteness each particular part, and speaks without having completely arranged and methodised his own thoughts, much less selected the exact words he means to employ. In this he differs from Mr. Brougham, than whom no man prepares with so much sedulous anxiety; the consequence of which marked difference is, however, that Denman succeeds in many cases of a certain class, when Mr. Brougham would most decidedly fail. Of the latter gentleman, it was well observed (by the author of his sketch in the *Dublin Literary Gazette*) that there was no moral *goodness* in his oratory. Nothing can be more accurately true; and although he be a man of gigantic intellect, gifted with mighty powers, fostered by knowledge as profound as it

is various, yet is his eloquence eternally cold and bitter and sarcastic, whether he derides the "mad doctors" (as he called them) at Gray's-inn coffee-house, lectures Sir Edward Sugden before the Lords, or scoffs at Lord Aberdeen in the Commons: still is he the same—still you hear nothing but relentless irony and bitter sarcasm. The consequence is, that you walk away deeply impressed with a conviction of his vast abilities, but half frightened the while; for he not only has a giant's strength, but uses it like a giant. Place him before a jury, and desire him to move their sympathies, or to touch their hearts by an affecting tale of suffering and misfortune, and, if he be an honest man, he will tell you he could not do it, and will hand his brief over to Mr. Denman; *he* will at once have the jury and his audience with him, not so much by proclaiming original and striking principles as by telling them, in a feeling and happy manner, of homely truths with which they have been long acquainted. They see a man before them, pleading the cause of injured innocence, or vindicating outraged character, with soul and passions like themselves; they look into his intelligent and manly countenance, and they are pleased, because they behold in it a faithful index of a sound and honest human heart; they hear his round and

mellow voice rise into strength and loudness when he is indignantly denouncing villainy or exposing baseness; they hear it subdued into softness when he is naturally affected by the nature of his case, and they see him tremble with emotion at the touch of pity. They are not cold-hearted critics, and have no time to observe trivial errors or to catch up petty slips; pleased to find that his soul is in the subject, that he is not thinking of himself, or seeking for nice words and aspiring after flowing sentences, they confide in him unhesitatingly, and are led captive by his natural and engaging manner, by his feeling and spontaneous eloquence. The hearer would be disposed when Mr. Brougham had done to take his hat, and make him a low bow before he walked away; but he feels an irresistible inclination to rush forward and grasp Mr. Denman by the hand, as if he had unexpectedly recovered an old and well-tried friend. Of his uncompromising integrity as a lawyer it is almost needless to speak; it has never been denied or doubted. By the malevolence of party it has remained unquestioned, even in the hottest times of political excitement. When I use the word integrity, I mean not merely that tradesman-like honesty which teaches a man to discharge his duty, and prevents him from betraying a trust reposed in him. By

the term, as applied to Mr. Denman, I mean that high and chivalrous sense of honour, the animating principle of a noble and generous nature, which prompts a man, regardless of personal emolument, and in contempt of personal interest, to encounter all risks and to brave all consequences for the sake of truth and justice, with an utter recklessness of his own future prospects. In the memorable event of the Queen's trial, he inveighed against her prosecutors with a thoughtless impetuosity which hurried him into expressions not merely indiscreet, but so improper as to require the decent veil of a learned language. His classical friend, Dr. Parr, it is said, supplied him with what has since been emphatically termed *Denman's Greek*. 'Tis a painful subject to advert to, and had better be buried in oblivion, for however the quotation alluded to might have savoured of pedantry and coarseness, it exhibited but little of that good feeling and urbanity for which Mr. Denman had been so proverbial, and which under every excitement should mark the deportment of the scholar and the gentleman. His zeal and vehemence on this occasion, nearly destroyed, and for a long time certainly retarded, his professional advancement; after a lapse of some years, and when the fervour of political agitation had abated, Mr. Brougham accepted a silk gown, much to

the surprise of his professional brethren, who had supposed that his attachment to Mr. Denman was so ardent, that he would not permit himself to be promoted while his friend was left behind the bar. However, doubtless for substantial reasons, Mr. Brougham marched to a more comfortable seat within the bar, while Mr. Denman remained the ornament of the outer bench, and might have so continued still, but for the impartiality and candour of our military premier—Wellington. 'Tis said that reports were diligently circulated injurious to Mr. Denman's prospects; that in consequence he had several conversations with Lord Lyndhurst, who graciously informed him that he would obtain his promotion in due time, doubtless intending to perform the promise when he conveniently could; dissatisfied with the Chancellor, he visited the Duke of Wellington, who in a brief interview of five minutes' duration, acknowledged with characteristic frankness that he saw no good reason why an advocate should be punished for boldly defending his client, and that he would certainly and speedily attend to his claims. The consequence of this interview was, that Mr. Denman soon obtained the step to which his talents and standing had long entitled him. Our distinguished fellow-countryman (the Duke) evincing by this act of justice that he had correct

notions of the privileges of an advocate, and of the duty of a great minister.

In concluding my account of Mr. Denman's character as a lawyer, I can, perhaps, convey the most exact idea of his professional powers by contrasting them with those of his legal brethren; if you had a rotten case to patch up, of course you would select Sir James; if you wished to argue a special verdict Mr. Pollock; if to chastise or terrify your opponent, Mr. Brougham; if to vindicate your character or to defend your life, Mr. Denman.

On his parliamentary career this gentleman can look back with pleasure; independent and consistent, he never deviated from those principles which from a sincere conviction he had first embraced, to ingratiate himself with the minister of the day; he fearlessly denounced corruption wherever he found it, and forgot his own interest in the larger and more comprehensive interests of the country. That he is not now in Parliament I consider a national loss, and as a frequent listener in the House of Commons, I regret the absence of a man, who by his ready eloquence might throw life into debates, now alas! almost bereft of vigour and animation, but pre-eminently distinguished for flippancy and dullness. But it is not for his patriotism as a senator, or

for his excellence as an advocate, that I consider him most deserving of approbation, he is entitled to the respect and love of his fellow-citizens "because he is a friend to the moral improvement of man." Associated with Mackintosh and Brougham, he has struggled hard to spread abroad the light of knowledge, and to diffuse the blessings of a sound and useful education amongst the ignorant portion of his countrymen; he has been the firmest friend to the London University and other institutions which have had the education of the public for their object, he has been the bitterest enemy of that monstrous birth of modern times—the slave trade; and associated with illustrious rivals in a still more glorious cause, his name will be treasured in the recollections of the wise and good, so long as a single tract of the much calumniated "Society for the Diffusion of Useful Knowledge," shall be extant. Each succeeding month adds fresh laurels to those which he has already won; he may wear them without a blush, for they are unstained by the blood which tarnishes the proudest trophy the conqueror ever gained by the slaughter of thousands, to gratify the cravings of ambition. It must be to him a delightful reflection, that by no human power can he be deprived of his well-earned reputation.

In private life, Mr. Denman is amiable, kind, and

generous, so that even those who dislike his politics, admire the man; by the members of his own profession he is beloved; on circuit he is the centre of attraction, possessing the happy art of winning the esteem, and gaining the affections of all who come within the reach of his society and conversation: this is high praise, but I have asserted nothing but what I believe to be the truth. I may add, that he is an ardent and critical admirer of the Fine Arts, and indeed of every thing that tends to humanize, adorn, and improve mankind. Mr. Denman has, I should suppose, but little chance of obtaining high preferment, he is now common serjeant of London, a place in the gift of the corporation, which was well bestowed on such a man. The road to the bench is still somewhat crooked, for although through the correcting influence of public opinion, men only of undoubted talents and great experience, are placed in the most prominent and difficult situations, men whose names spread a lustre round our seats of justice, yet the humbler, but hardly less important places of the Puisne-Judges, are not unfrequently procured by the instrumentality of private friendship, given as a snug retreat for an old friend, or bestowed as the appropriate reward of political subserviency. Mr. Denman, however, is not afflicted with a selfish disposition, or a contracted heart,

and will be compensated for the loss of wealth and advancement, by the love of his professional brethren, the gratitude of his fellow-citizens, and by the esteem and admiration of all honest men.

NOTE BY EDITOR.

April, 1870.

MR. DENMAN was called to the English Bar in 1808; appointed Solicitor-General to the Queen Consort (Caroline) in 1820; Common Serjeant to the City of London in 1822; Attorney-General to the King in Lord Grey's administration in 1830; Chief-Justice of the Queen's Bench in 1832; created Baron Denman, March, 1834; retired from the Bench, March, 1850; died 22nd September, 1854, aged 75. Mr. Denman was, as most readers know, the colleague of Mr. Brougham, in the honourable but perilous post of Solicitor-General, and advocate of an impeached Queen in 1820. Their sturdy defence of the Queen was not calculated to win the favour of her amiable lord the King. The Queen (Caroline) died soon afterwards (1821), and her Attorney and Solicitor-General, who had, as such, place and precedence within the bar, with silk gowns, were compelled to descend to the outer bar and resume the more homely gown of stuff. During Lord Eldon's continuance in the Chancellor-

ship, from 1821 to 1827, this position, almost of indignity, was suffered to remain. But immediately after Mr. Canning became Prime Minister, and Lord Lyndhurst, Chancellor, Mr. Brougham received his patent of precedence (July, 1827), and shortly after that again, Lord Campbell tells us that he himself was included in a batch of King's Counsel, which (with one exception) was supposed to include all—whatever their politics—who had fair claim to this distinction. Mr. Denman was still proscribed, till the following year (1828), when the Duke of Wellington became Premier, and did justice to the Queen's Advocate in the manner truly and graphically described in Mr. Whiteside's sketch.

The secret of Mr. Denman's particular and persistent exclusion has since been disclosed. In the course of the Queen's trial, Mr. Denman in his defence of his client, made use of a Greek quotation, borrowed (second-hand) from Bayle, which was supposed to convey an allusion to the King, gratuitous and offensive in the highest degree, and which, even in the mitigated sense given to it by its apologist, imported something to the effect that the Queen's accusers were "foul-mouthed." This was an offence to the cultivated and fastidious taste of King Geo. IV., which Lord Lyndhurst

would not venture to justify or even excuse, but when Mr. Denman appealed to the plain and honest sense of the Duke, and offered his explanation of the quotation, the Duke was satisfied that Mr. Denman had made use of no language which did not properly come within his province, in the zealous and proper discharge of his duty as an advocate, and immediately afterwards Mr. Denman's patent was made out.

It is needless to say that the Duke made no conditions of support or adhesion in return for this act of justice, and that Mr. Denman received no other promotion from the Duke. But his advancement was nearer than he could have well supposed.

The Catholic Emancipation Bill received the Royal assent on the 13th April, 1829. It was the last triumph of the nomination system. Though now very generally admitted to have been a wise and just measure, it was undoubtedly carried against the sentiment of the majority of the English people, by force of aristocratic influence in the nomination boroughs. It added 50 votes to the Liberal party, and secured the speedy downfall of the Wellington ministry (17th Nov. 1830), and the advent of an administration, under Lord Grey, pledged to Reform, in which Brougham became Chancellor, and Denman Attorney-General to King William IV.

Mr. Denman held the post of Attorney-General till March, 1832, when Lord Tenterden retired from the King's Bench, and was succeeded by Mr. Denman, as Lord Chief Justice of England. He was raised to the Peerage in March, 1834, under the title of Baron Denman, in consequence, it was alleged, of the Chancellor's feeling the necessity for a fresh coadjutor in the House of Lords, in the appellate duties; but, probably, rather because of the good old notion that the Lord Chief Justice was generally regarded as having fairly entitled himself to nobility.

Mr. Denman's legal acquirements were never considered to be profound. He owed his success and reputation rather to his high character and a certain degree of eloquence, generally calm, and impressive, but capable of becoming impassioned and commanding when occasion required it.

As a Judge, Lord Denman was dignified and impartial, and if not distinguished by great learning or legal acumen, the signal courage and high moral tone which characterised his career at the Bar, asserted themselves perhaps still more in his new sphere.

In the great constitutional contest between the House of Commons and the Judges of the Court Queen's Bench—Stockdale *v.* Hansard—at a time of much poli-

tical excitement, Lord Chief Justice Denman, with fearless intrepidity, vindicated the right of the subject to have redress for a libel affecting his character, though published under the sanction of the House of Commons, and in assertion of its privilege to publish reports of its proceedings. Addressing the jury who tried the case, Lord Denman said, "My direction to you is, that the fact of the House of Commons having directed Messrs. Hansard to publish all their parliamentary reports, is no justification for them, or for any bookseller, who publishes a parliamentary report, containing a libel against any man." The House of Commons, led by Sir Robert Peel, as well as by Lord John Russell, sent the sheriffs of London to prison for contempt, in executing the process of the Court of Queen's Bench. The Court of Queen's Bench, in turn, brought up the sheriffs to their bar under writ of *Habeas Corpus*, and then the proud assembly, having advanced to the very verge of a revolutionary contest, receded, took more moderate counsels, and sheltered their asserted privilege under the sanction of an Act of Parliament.

Again, in 1844, when the indictment against Mr. O'Connell for sedition was brought before the House of Lords on appeal, Lord Denman had the courage,

by his casting voice (Lords Brougham and Lyndhurst being balanced by Lords Cottenham and Campbell), to reverse the decision below, and overrule the opinion of the great majority of the judges in England and Ireland.

There were two principal questions, raised for consideration—one of these was, whether a challenge to the array of a jury panel, on account of the alleged fraudulent omission of fifty-nine names from the list of the jurors of the county, was a valid ground for setting aside the panel so returned? Chief Justice Tindal and ten of the judges of England held, with Lord Lyndhurst, that a challenge to the array is confined to cases in which the *sheriff* has done wrong, and does not apply where the wrong is done by an officer like the Recorder or the Clerk of the Peace, who acts for him. Upon this, Lord Denman, declared that if such a practice as that which had taken place in this case were without a remedy "trial by jury itself instead of being a security to persons who are accused, will be a delusion, a mockery, and a snare." The other question was somewhat more difficult to deal with. The indictment contained altogether eleven counts, embracing, in effect, six distinct charges. Several of the counts, and the findings

upon them, were held bad by the unanimous opinion of the English judges; five of the counts remained untouched, and the sentence of the Court of Queen's Bench—of fine and imprisonment—was "for the offences aforesaid." Some of the judges considered this should be interpreted to mean, "for the offences properly charged and properly found on the record." Baron Parke (Lord Wensleydale) and another judge considered that the Court had passed sentence on the defendant for the offences charged in each and every of the counts, good and bad; and the main question was, whether the judgment for the Crown could be supported, it being a general judgment, and the punishment not determinate or fixed by law, or capable of being distributed. The majority of the English judges pronounced the law to be in conformity with a case in which Lord Mansfield had stated that a good judgment can be pronounced on an indictment which contains some counts so bad, that on them the judgment might be arrested; from which it had been (as Lord Denman thought) rashly and groundlessly taken for granted that a *general* judgment, pronounced on an indictment, consisting of bad as well as good counts, where a verdict has been taken for the Crown upon all, cannot be reversed upon a Writ of Error;

but of this opinion were the great majority of the judges of England and Ireland. Lord Denman, when pressed with the weight of the authority of the judges, said:—"The House of Lords were not bound to do more than respect in the highest degree, and consider with the utmost care, the opinions which may have been given. But you have a duty of your own to perform; your consciences are to be satisfied, your minds are to be made up; your privileges afford you the assistance of the most learned men living; but your duty forbids you to delegate your office to them." He proceeded—"What has happened in this House not twelve months ago? The Queen *v.* Millis,—the Presbyterian marriage case was before it. There was a universal opinion at the English Bar, founded on *dicta* of judges as illustrious as any who have ever filled the seats of justice in any country, upon a question of no less importance than the nature of marriage. Lord Mansfield, Lord Ellenborough, Lord Kenyon, Lord Tenterden, and Chief Justice Gibbs, and many others, all clearly took the same view of the subject on the nature of the contract. Nay, more, Lord Stowell, half a century of whose valuable life had been devoted almost exclusively to the consideration of the subject, had pronounced a decree conformable to that opinion. The judges con-

sulted, and formed an opinion directly contrary to that of the judges in former times, and the judgment of the House of Lords decided against the *dicta* of the most venerable and distinguished individuals." He then proceeded to show that this whole doctrine had arisen from a single remark of Lord Mansfield, twice repeated—that where there is one good count and one bad, and the verdict is general and for damages, in that case the Court will set aside the verdict; from which Lord Mansfield proceeded to the extrajudicial declaration that the law in criminal cases was otherwise.

He added:—"I am tempted to take this opportunity of observing, that a large portion of that legal opinion, which has passed current for law, falls within the description of 'law taken for granted.' If a statistical table of legal propositions should be drawn out, and the first column headed, 'Law by Statute,' and the second, 'Law by decision,' a third column under the heading of 'Law taken for granted,' would comprise as much as both the others combined. But when in pursuit of the truth, we are obliged to investigate the grounds of the law, it is plain, and has often been proved by experience, that the mere statement and re-statement of a doctrine, the mere repetition of the *cantilena* of lawyers cannot make it law, unless it can

be traced to some competent authority, and if it be irreconcileable to some clear legal principle."*

It is just to Lord Denman to say that he did not lightly regard, or hastily overrule the opinions of the English judges. Although it is not usual when the judges are consulted by the House of Lords, that a judge who had the honour of a seat in the House should attend the consultation of the judges, yet, in this case, Lord Denman, as he said:—"Was so much stimulated by the immense importance of the question, and so entirely unconvinced by the reasoning of the learned judges in Dublin, that he felt a strong desire to ensure the benefit of a full discussion of the point by attending the consultation."

Lord Denman's firm and manly resistance to the almost overwhelming force of the authority of the Judges of England and Ireland, was the more intrepid, in that the case had assumed something of a political aspect, and his conduct might have been attributed to the proclivities of a warm partizan, rather than to the independence of a high-minded magistrate; but time, which in the main vindicates all acts, has established, so far as I can collect, with the approbation of the profession, the soundness and justice of his decision.

* 11 Cl. and Fin. 273.

Few there are—whatever may be their political creed or profession—who now feel regret that O'Connell's prison doors were opened; and, perhaps, there is not a lawyer in Westminster Hall or the Four Courts, who could be got to endorse Lord Brougham's angry but misplaced apothegm, that "the decision had gone forth without authority and would return without respect."

SIR CHARLES WETHERELL

June, 1830.

Sir Charles Wetherell is the honestest and the oddest man at the English Bar. He is a confirmed eccentric; if, however, his character affords something at which to smile, it certainly exhibits nothing which men can either hate or despise. We feel happy in meeting with an individual, the honesty of whose nature has not been perverted by the tricks of State, and who has proved that his integrity was dearer to him than his interests. We are almost disposed to like a man who is an oddity, if satisfied that there is nothing of the hypocrite in his disposition, his eccentricities are in some degree pledges for the independence of his mind. The oddities of an original character are displeasing to the people miscalled great; 'tis hurtful to their pride to think that a man should presume to appear in their pre-

sence in his every-day old coat, and venture to accost them in a blunt, inartificial manner—not putting himself out of his way to gratify their perverted tastes, or bending to proud men, spoiled by subserviency. *They* resent accordingly the insolence of honesty; it alarms and discomposes them, and, therefore, if they have it in their power, they punish unsparingly the criminal, that is, the honest man. As, then, it is the interest of place-hunters and place-keepers to succumb to the place-givers and place-takers, that individual must be virtuous, disinterested, independent, his heart must be made of the right stuff, who will resign thousands of pounds per annum, and all the other sweets of office, rather than yield to power, or truckle to apostacy. It is not only that Sir Charles would not be persuaded to abandon what he believed to be the honest cause, but he could scarcely be prevailed upon to lay aside any of his very singular propensities:—for example, he would not put on a pair of suspenders, were he about to visit his Majesty himself. Whether he submitted to the incumbrance when paying his addresses to his present youthful wife, I cannot positively say; although he may have done so, in order, according to lawyer-like principles, to provide against contingencies.

If you met Sir Charles in the street, you would certainly ask, who can that strange man be? and turning round to look after him, you would exclaim, what a singular person that man surely is! He wears a hat which may have been originally black, about the time that Cowper tells of, "when yet black breeches were not;" but if so, it has since changed into a dingy brown; the brim is always driven up behind by the collar of a long brown surtout, just fit company for the hat. The coldest day in winter the surtout flies open—while the valorous knight, thrusting his hands into the pockets thereof, turns them fairly inside out, and forces them forward till he makes both hands meet before his legs; so that when you look behind, you are surprised to see all bare, up to the middle of the lengthy back. The black suit within is somewhat seedy, while between the waistcoat and waistband of his breeches, there is ocular demonstration of that vacuum, about the existence of which philosophers have talked so idly and so much; of the fair white linen, more or less, is to be seen, according as the wind chances to be high or low, or Sir Charles in a state of excitement or tranquillity—the latter, to do him bare justice, seldom happening to be the case. He ties his cravat, bunch-like, in the dark; and he wears great tapes in his shoes, which seem, from

their dim and dusky aspect, never to have enjoyed a single brush of "Warren's Incomparable" or "Hunt's Matchless." As he strides along, he plunges his foot into every gutter that comes in his way, looking loftily, and muttering between his teeth, "I am no longer Attorney-General, to be sure, but I am the independent member for Plympton; I don't care a fig for the duke, and as for Peel, he is a rat, and so I'll tell him."

But what is seeing to hearing? So, of course, you hurry to the Court of Chancery, thinking, possibly, of the musical tones of Mr. Serjeant Blackburne, the scholar-like elegance of Mr. Pennefather, or the gentlemanly composure of our Irish Attorney-General, Mr. Joy. Such being the current of your thoughts, Sir Chas. astounds you first, and immediately after convulses you with laughter. You see a man projecting his body forward, throwing it back, then to the right, and then to the left—indulging in gesticulation remarkable for its angularity; himself in a tremendous state of excitement, labouring as if "for the bare life" to convince the Chancellor of the iniquity of decreeing for the specific performance of such an "unilateral agreement," making the oddest and most unexpected combinations of language, using hard words unsparingly,

words of uncommon dimensions, winding up his argument with a closing thump upon the table, and a line from the Æneid of Virgil, or the Odes of Horace.

Yet it must not be imagined for a moment that Sir Charles's speech is a burlesque; on the contrary, in the midst of all this extraneous and amusing matter, he displays an intimate acquaintance with previous decisions, applies sound law, and reasons well on portions of his case, though he does not speak consecutively. Previous to his obtaining a silk gown, he had considerable practice, not only in the Courts of Chancery and Exchequer, but before committees of both Houses of Parliament. His volunteered defence of Watson for high treason drew all eyes upon him, some wondering that he, of all men, should have undertaken a case so contrary to his usual practice, others wondering still more how he would conduct it. Unkind reports were spread, which are unworthy of belief, such as, that his appearance as counsel for Watson, the traitor, originated in political pique at not being made Solicitor-General in preference to Sir R. Giffard, or from a burning desire of notoriety. The truth I believe to be, that the old Tory was selected from his known honesty and indomitable courage. *I*, as Sir Charles himself would say, repeat my original proposition, that

he (Sir Charles) is the honestest man at the English Bar, not excepting the great *Harry* himself. Critics may dispute as they please about the merits of the speech for Watson, and deny it the praise of being correct and chaste oratory; but chasteness of style was not the thing wanted in such a case, and correctness is but another name for coldness, when a client's life is on the issue: in my opinion, it was a speech of much ability, because, according to Napoleon's criterion of the talent of a general, it was successful. Sir Charles spoke for eight hours *only;* he might have spoken for twenty-four with great ease to himself: unquestionably, he did not display closeness of reasoning or splendour of diction comparable to Erskine's defence of Hardy, nor did he rival the brilliant eloquence or touching pathos of Curran; his speech, in fact, differed from all the speeches that ever were made on the subject of high treason before; it was a strange compound of the serious and comic, the solemn, the ludicrous, the abusive, and the affecting. Even in a case of life and death, his favourite propensity of saying odd things did not forsake him; he declared with great emphasis that he had never heard "of a constructive or interpretative *pike.*"

Throughout, however, his address was forcible and

convincing, and delivered with consummate boldness: he spoke with the proper spirit becoming the independent member of a high profession, and whether the judges smiled or frowned, it was all the same to him. He branded the arbitrary doctrine of constructive and accumulative treason with every odious epithet which his exuberant imagination could suggest. He did not stop to parley with the government, and to say as mawkish lawyers are apt to do, that the government, with the best intentions in the world, had only mistaken the law; on the contrary, he roundly taxed the Crown lawyers with the serious offence of seeking to destroy the distinction which from the passing of the memorable statute of Edward III. had ever subsisted between treason and misdemeanor. Lord Ellenborough, it is true, with unjudicial warmth, tried to check him, the Crown lawyers loudly protested, and Sir Charles as loudly persevered. The printed speech reads much better than that which was delivered, because the repetitions were omitted, and the looseness of his language considerably compressed. He declared that it was "difficult for him to argue whether an association of persons, consisting of two broken-down apothecaries, a reduced gentleman, and two cobblers, could entertain the project of a revolution."

His great object was to ridicule the notion of a rebellion, which in the following passage, he does successfully enough, but still in his own peculiar manner. "Let us see, however, what the force was, what its means were, and what its acts were: here are men who set out from Spa-fields; they have in the waggon their powder and shot, they have two flags and a banner, they have pistols and swords; they propose to go into the city, but unfortunately before they got there, the hostile army have the flagstaffs taken from two of the five generals, and that part of the rebel army is routed. Mr. Stafford routs the main division before it leaves the field, the rest penetrate into the city, and there a worthy alderman, Sir James Shawe, alone puts to flight the rest of these insurgents; this is the riot which the Attorney-General has worked himself up to calling a flagrant civil war: if it be, I think Sir James Shawe has been very ill-treated by the government; I have not heard that he has been made a peer, or got a pension, or a red ribbon, but I should have thought that some favour might have been shown him for his eminent services in putting down this rebellion, and particularly because he did it quite alone, and without assistance, civil or military." The attack on the Tower he thus described:—"You will recollect that half the

force was cut up in Spa-fields by Mr. Stafford, the rest of the force fainted into the arms of Sir James Shawe; and when the whole was annihilated, some man with a *loud voice* summoned it to surrender, not to a rebel army, but to himself alone." He cross-examined Castles, the informer, with considerable tact; and made him appear what he really was, an incomparable scoundrel. Sir Charles did not put the truth point blank, and thus tempt a point blank denial; but wisely proposed his questions in a more moderate form, leading the witness to suppose no harm could arise to him from admitting the fact to the wished for extent. The night before the defence, it is said, there was a consultation between the counsel, one of whom, it is reported, thought all was over with Watson, in consequence of the evidence of Castles. How to characterise this informer became a matter of discussion. "Leave him to me," said Sir Charles, "he is an indescribable villain;" and, accordingly, by that endearing epithet he distinguished him throughout the speech. The abuse of Castles was scurrilous and incessant, but not the less effective. The prevalent opinion I believe to be, that Sir Charles Wetherell's speech saved Watson from the block; and when his high Tory principles are taken into account, when it is recollected how many

lawyers would have quailed in such a case, his conduct, his boldness, and his spirit cannot be sufficiently admired. It is not, however, to be forgotten, that the speech to evidence for Watson was made by Copley—a speech which ushered him into fame.

In the smallest, as well as in the most important matters, his professional conduct has been upright and independent; to the bench he has been respectful, but resolute; to his equals pleasant; and, finally, to his juniors kind and encouraging. In a case before Sir John Leach, when Vice-Chancellor, he displayed alike a love of fairness, and a kind consideration for the younger men at the bar. The Vice-Chancellor had long been accustomed to dispense with the arguments of junior counsel, which plan enabled him to dispatch business the more quickly. Sir Charles, however, when an opportunity presented itself, boldly vindicated the right of junior counsel to submit to the court what, in their judgment, might be for the interest of their clients; his manly appeal to the judge produced the desired effect. How many King's Counsel are there who would for such a cause provoke the resentment of the bench?

Sir Charles was a favourite of Lord Eldon, although no two men could possibly be more unlike. His lord-

ship was grave, serious, and thoughtful, distinguished for calmness of speech while on the bench, and in his deportment as mild as in his profession he was learned. Sir Charles, on the contrary, was loud, declamatory, and impassioned. Their political opinions, however, were the same, and their friendship is still undiminished. Sir Charles never omits an opportunity of defending the character of his lordship, who was one of the soundest judges, perhaps the very ablest judge that ever presided in the English Court of Chancery.

In the Court of Delegates and on Commissions of Lunacy the subject of this sketch has been constantly employed, and on such occasions he is to be seen in his fullest glory. The delegates sit at a long table, at the end of which the counsel are placed, and there Sir Charles has been seen to wheel completely round, and with his back to the judges and his face to the wall, accompanying his words with his favourite action, has been heard to exclaim, "This man is not mad, I assert, even although he wears a shirt exterior to, and superinduced upon his tunic." In the great case of Davis, which occupied fourteen days, he was opposed to Mr. Brougham. I lamented when the case concluded, and when the lunatic, for such he was undoubtedly, was pronounced, by the verdict of a saga-

cious jury, to be perfectly in his senses, for nothing could be more entertaining than to witness the contests which occurred every five minutes between these eminent lawyers. The generality of readers know what sort of person Mr. Brougham is, and doubtless few of them would wish to have him for an opponent. On Sir Charles, however, his biting sarcasms fell powerless and harmless, his interruptions were idle, his pregnant eloquence of no avail. Did Mr. Brougham object to a question, Sir Charles made a speech in answer, and quoted Latin. Did Mr. Brougham attempt to dictate, Sir Charles, fired with indignation, spoke twice as long and twice as loudly. Did Mr. Brougham appeal to the bench, Sir Charles insisted on the right of a reply, so that Mr. Brougham, after being well fatigued and wearied, at last discovered that instead of gaining time he lost largely by his interruptions, so, telling Sir Charles to take his own way, he sat quietly down. Still, however, when a most irrelevant question would be proposed; Mr. Brougham would mutter something between his teeth about the loss of public time. Even that innocent recreation Sir Charles would not suffer, but desisting from his examination, he observed, "I like these harmonious sounds; the under tones of Mr. Broug-

ham's voice are sweetly musical and delightful in my ears." So that the now member for York was not, in Gray's-inn coffee-house, allowed even to grumble out his indignation, although in other places he can speak so loudly and so triumphantly.

In the House of Commons Sir Charles Wetherell is matchless. There he has neither judge nor jury to control him, and there, accordingly, he takes his full fling. His circumlocutions are beyond all conception, and his apologies are the richest things conceivable. In this department of oratory he displays the most wonderful ingenuity—putting his apologies in five-and-twenty different shapes before he ventures to touch upon the subject at issue. From these modest preambles, one might suppose Sir Charles to be the most diffident of mortals, who trembled while he spoke, and was fearful of offending the least of men; instead of which, after the first half-hour, when his apologies are over, no man speaks with more reckless boldness than the independent member for Plympton, of which Sir Robert Peel would, doubtless, bear ample testimony—not forgetting the proceedings of that memorable debate, in which Sir Charles thundered forth, "I have no speeches to retract, I have no words to eat;" looking furiously, and as if suiting the action to the

word, he would dislodge the right honourable secretary from the Treasury bench. If he lost his place through his invincible honesty, he certainly enjoyed the full satisfaction of avenging himself upon his apostate friends. Night after night he poured out his wrath upon them, intermingled with the oddest jests and most annoying jeers. What must have provoked the Ministry most was, that Sir Charles was always well received and listened to; his hits told admirably, and all his jokes were relished and applauded. The simple truth is, he is respected by the house, because he is known to be an *honest man*, and rare as that character may be, it still commands respect. The last time I heard him was in bringing forward his motion on the prosecution of the *Morning Journal* for libel. He spoke four hours in his opening speech, and two hours in reply. He went through the informations *seriatim*, and proved by precedent and argument the impolicy of the prosecution. But no human being could keep his countenance, either in looking at or listening to him, when he got warm in his subject. His lips were foaming, his voice raised to the utmost pitch, his shirt visible even more than usual, his action extravagant, as though he were boxing shadows in the air—he himself standing in the middle of the floor, and turning

his back upon the Speaker as often as his face; and in the middle of his most vehement bursts of honest indignation, and at the precise moment when you thought him most serious, using expressions the most irresistibly comic; as, for example, finishing his accusations against one of the prosecutions by saying it was for an "omnibus indictment." In his speech, however, there was much truth, and the house felt its weight; and though his motion failed in the house, yet it did good service in the country. He seemed more vexed with Sir Francis Burdett than any of his opponents; and in his reply, at three in the morning, called him "a Westminster patriot," "a theoretical patriot," who made hollow speeches in favour of the liberty of the press, and gave stiff votes against it. He at the same time complimented Mr. O'Connell highly, and thanked him for his zealous and able assistance.

The faults of Sir Charles Wetherell, as a speaker, arise mainly from his own acuteness, and from the want of methodical arrangement; it seems as if he wished to advert to all parts of his subject at once; and, taking it for granted that his hearers know as much about the matter as he does himself, before he has finished one proposition he flies off to another, and then, upon the impulse of the

moment, recurs to the first—a mode of speaking which necessarily gives rise to much repetition. Of his tesselated style of English, cut on Latin, so much has been said by everybody else, that I shall say nothing. He has a horror of brevity or condensation; seeks out diligently the longest words, and excels in the art of amplification. His knowledge is very generally applicable, and he does not hesitate to display it on every occasion.

He has high claims upon the respect of the public, or of that portion of it by whom consistency is admired and integrity honoured. The office of Attorney-General has been the rock on which lawyers have made shipwreck of character and fame. He affords to his professional brethren a bright example of uncompromising independence. The quiet, cautious, steady men of the legal profession, who scarcely ever speak above their breath, and are always ready with a smooth word and a facetious smile, and whose most noble aspiration is not to appear remarkable, could never comprehend such a character as Wetherell. If Sir Charles be an oddity, let this be his excuse:—"Liberty is the glorious cause; that it is which gives human nature fair play, and allows every singularity to shew itself; and which, for one less agreeable oddity it may bring to

light, gives to the world ten thousand great and useful examples."

NOTE BY EDITOR.

April, 1870

Sir Charles Wetherell was one of the notables of a former day—a distinguished member of the legal profession, of whom it might be truly said, he loved his principles, if not wisely, at least well. For them he sacrificed present office and future promotion, and died unennobled and almost unnoticed. The sketch made by Mr. Whiteside in 1830 is, therefore, the more valuable and interesting. It does cordial justice to the man and his many virtues, and describes, with great force and point, the traits of a very worthy but eccentric character.

Sir Charles was born in 1770. He was the third son of Dr. Wetherell, Dean of Hereford, who enjoyed the distinction (such as it is), that he is mentioned by Boswell as the friend of Dr. Samuel Johnson. He was called to the English Bar in 1794, and selected the home circuit. At Nisi Prius and in criminal business

Sir Charles was not successful. He wanted the tact and adroitness of his great contemporary, Scarlett. His zeal occasionally outran his discretion; his arguments were too ingenious and finedrawn, and his language too scholastic for the plain understanding of juries. However, in good time he forsook the Common Law Bar for the Equity Courts, to which he attached himself when Lord Eldon became Chancellor, and there he rapidly rose into extensive and lucrative practice.

Lord Campbell enumerates Sir Charles Wetherell as one of those who suffered from Lord Eldon's stingy and procrastinating distribution of the honours of the bar, so strikingly in contrast with the profuse liberality of modern times. Sir Charles had been twenty-two years at the bar before he received a patent of precedence, which terminated with the life of his sovereign, and, on the death of George III., remitted him to the stuff gown. Lord Eldon himself obtained his silk gown after the short period of seven years. It is so much the more strange, that he should have been so chary or grudging of honors well deserved, as to keep one who had long enjoyed high professional eminence—one who was a Tory of the Tories, and his particular friend—to shiver in stuff until he was nearly grey-headed.

Mr. Wetherell—having considered himself unfairly passed over for the Solicitor-Generalship, by the appointment of Mr. Giffard, a protege of Lord Eldon, who, on account of his supposed extraordinary merit, was selected for the office while wearing a stuff gown behind the bar—breathing vengeance against the Government, accepted, or volunteered, the defence of Watson, tried for high treason in 1817. Wetherell's speech, according to contemporary accounts, was a complete success, probably the most brilliant performance of his life. The Crown was ignominiously defeated, and Sir Charles avenged.

Lord Campbell, who was present, describes the speech of Wetherell as abrupt and declamatory, and says that it did not carry with it the sympathies of the jury, who would, probably, have returned an unpropitious verdict had he not been followed by another counsel more calm, persuasive and successful. This was Serjeant Copley, afterwards the renowned leader of the House of Peers as Lord Lyndhurst.

Watson's case is, therefore, worthy of particular remembrance amongst lawyers, as it proved the stepping-stone by which this eminent member of the profession crossed over from the region of brieflessness into the Goshen of lucrative practive, professional honours, the

woolsack and the peerage. Lord Campbell, who possibly had himself tried most of them, says there are four, and only four, ways in which a young man may get on at the Bar:—1. By Huggery. 2. By writing a Law Book (or by editing Law Reports?) 3. By Quarter Sessions. 4. By a Miracle. John Singleton Copley had been thirteen years at the Bar, and in the thirty-second of his age, before any of these ways of advancement opened to him. He was too much of a gentleman to flatter the attorneys or court their clerks, authorship and probably Law Reporting he held in contempt. At Quarter Sessions he had tried his hand with moderate success, limited to a county, and it did not secure him business when the assizes came round, as he was apt to be postponed to juniors with a London reputation as special pleaders. Watson's case proved for him the miracle—the conjunction of the opportunity of making a great speech in a popular cause, with full ability on his part to improve the advantage. Lord Campbell heard the speech with great delight, and says he considered it one of the ablest and most effective ever delivered in a court of justice. It was a close chain of reasoning on the evidence, rather than an impassioned harangue or an oratorical display, so much so that to select passages

apart from the whole, would convey little idea of its merits. Among the listeners was one more influential and more impartial than Lord Campbell. Lord Castlereigh heard the speech, and said that if Serjeant Copley had been for the Crown the prosecution would have succeeded. He expressed a wish that he might never be counsel against the Crown again, and, like a wise and sensible man, took immediate steps to secure the services of the accomplished advocate, for the Government. Serjeant Copley accepted the offer to the great advantage of himself, of the party he joined, and of the public. What Lord Campbell saw in this that was "unprincipled" or an "utter sacrifice of character for political consistency" is hard to conceive. What foundation he had for the grievous imputation that Serjeant Copley, in 1817, entertained opinions much the same as those professed by the prisoner—savouring of revolution and treason—he has not condescended to state; it may have been the mere gossiping slander of the town, every scrap of which he has preserved for posthumous distribution, so that, from his grave he might asperse the memories of the illustrious dead, and disparage, if he could not dishonour, the reputation of the friends that survive. The charge of political tergiversation is easily made—

witness Sir James Scarlett, Sir James Mackintosh, Lord Plunket, all of whom, with probably equal injustice, have been libelled as waverers or deserters from their early colours. Judge any man, whose youthful impressions are sufficiently vivid and vigorous to be noticed, by his warm admiration of the heroes of Greece or Rome, or the successful issues of the French or American Revolutions, and at a future time, when the sober realities of life have convinced him how little applicable are the principles of his heroes to the actual condition of his country, and, while still perhaps retaining some remnant of his boyish fancy and admiration, he declines to put into practice the romantic theories of his youth, and brand him as a revolutionist and a renegade, and the charge is unjust. Sir John Campbell's absence of imagination may have saved him from the weakness of hero-worship; but there were men as honourable and as loyal as himself who may have been captivated by the extraordinary genius and romantic exploits of Napoleon Bonaparte.

Mr. Wetherell entered Parliament in 1820, as Member for the City of Oxford. In 1824 he was made Solicitor-General in the administration of Lord Liverpool, with Sir John Copley, Attorney-General. In

1826 Copley became Master of the Rolls, and Sir Charles succeeded to the office of Attorney-General.

When that good old Tory, the Earl of Liverpool, was obliged to resign the reins into the hands of the dreaded innovator, George Canning, Sir Charles, with the majority of the Tory Ministers, including the Duke of Wellington and Peel, withdrew. Sir Charles was succeeded by Sir James Scarlett, and returned to office with the Duke in the following year, 1828. But his possession was short. The King apologetically informed Lord Eldon, that when the Duke's administration was formed, no reason was given to the King to suppose that the Cabinet had in their contemplation anything like a Bill for Catholic Emancipation, but that after some time he was applied to to allow Ministers to to submit to Parliament a measure on that subject, to which the King says he consented so far that the "Protestant members of his Cabinet, *if they could so persuade themselves*, might join in such a representation to him." When Parliament met, the speech from the throne invited the consideration of the removal of the disabilities of Roman Catholics, and *whether it was consistent with the full and permanent security of our Establishments in Church* and State and with the maintenance of the reformed religion established

by law, and the rights and privileges of the Bishops and Clergy of the realm, and of the churches committed to their charge.

Sir Charles Wetherell was one of those who could not persuade themselves of this, and, holding the office of Attorney-General, he manfully, if not wisely, declined to have anything to do with the Bill. More than this, he made the most impassioned harangue in Parliament against the Ministry, especially the Lord Chancellor (Lyndhurst) and Mr. Peel. In one passage of his speech he said: "He was asked to draw this Bill. He would not condescend to stultify himself by the composition of such a Bill. They might have turned him out of office, but he was not to be made such a dirty tool as to draw that Bill. He cared little for being attacked. He had no speech to eat up—no apostacy to explain. He had no paltry subterfuge to resort to. He had not to say that a thing is black one day, and white another. He was not in one year a Protestant Master of the Rolls, and in the next a Catholic Lord Chancellor. He would rather remain as he was, the humble Member for Plymton, than be guilty of such apostacy—such contradiction—such unexplainable conversion—such miserable and contemptible apostacy."

The speech was delivered in Sir Charles's impetuous and eccentric manner. It produced great sensation in the House and throughout the country.

It is needless to say that he immediately resigned his office of Attorney-General, and did not wait for the exercise of the Duke's stern discipline, as administered on a similar act of insubordination toward Mr. Huskisson. Sir James Scarlett, as we have stated before, became his successor. Sir Charles paid the penalty for his sincerity, and never again put his foot on the ladder of promotion. His protest against the passing of the Catholic Relief Bill was in vain. The measure was just and necessary, and, therefore, howsoever present appearances may be to the contrary, must have been wise. It cannot be denied that the apprehensions and prognostications of Lord Eldon and of Sir Charles Wetherell, as regards the consequences of the measure, in its bearing on "the maintenance of the reformed religion as established by law," however fanatical or exaggerated they may have seemed at the time, have been realised and verified too closely by past and passing events, not to afford ample vindication of the consistent course which these men honestly pursued. It was not their fault that justice was tardy and thirty years too late.

Another parliamentary performance of Sir Charles, full of the characteristics of the man, is given from the pen which traced the foregoing sketch. It describes a scene that occurred in the House of Commons, shortly after the introduction of the Reform Bill (March, 1831), when the writer happened to be present:—

"Shortly after we entered the House, Sir Charles Wetherell started up with a ludicrous gesture, which, to the delight of all who love merriment, caught the eye of the Speaker. Sir Charles was evidently big with utterance; his commencing "Sir!" was the grateful expression of an overcharged mind; and, within two minutes after rising, he had thrown himself, body and soul, into his subject. His tones were unusually loud; his body unusually distorted. He told the House facetiously that he considered himself in the unhappy predicament of rising to make his last dying speech; and, in truth, his strange convulsions of feature and figure savoured strongly of such a consummation. His speech was another version, adapted merely to the circumstances, of what he has delivered on repeated occasions. We had the *crambe recocta* of Peel and Co., in the shape of Althorpe and Co.; that of the "expiring Attorney-General," served up in the shape of the "dying Member for Boroughbridge;"

that of "*Magnum latrocinium*," learnedly translated into "Corporation robbery." Sir Charles's phrases seem, in his own opinion, too refined and facete, too pleasant and witty, not to be occasionally revived, too generally applicable not to deserve and bear repetition; and, indeed, the House seemed to participate in the last notion, for loud peals of laughter accompanied the learned member through almost each sentence. This, to be sure, might be a tribute to the singular exhibition made by the gesticulating lawyer in the apparent character of pantaloon. His face turned to the Bar—his back to the Speaker—his clenched fist now hurled over at the ministerial benches, as if to destroy the noble "military deputy of the popular, amorphous, united, unanimous, and consolidated cabinet;" and now struck with appalling vehemence on the table; his body bent forward till almost double, and then bent, in nearly an equal degree, backward; his arms swinging to and fro, like the sails of a windmill; and his mouth, after the fashion of Dominie Sampson, grinning like an ogres—all this presented a picture which, we venture to say, could not have been equalled even in Astley's amphitheatre. Not to have applauded such a meritorious actor, would have been base ingratitude, and accordingly the House reverbe-

rated with a just tribute of cheers and laughter. The Speaker, with his glass to his eye and his handkerchief to his face, enjoyed himself especially. To give a sample of the speech would be vain; it was one, after a boroughmonger's own heart; the result of a problem as to how large a number of expressions, with as little meaning as possible, might be crammed together in the space of an hour and a-half. Confusing, by its wordiness, and anon relieving by its quaintness and absurdity, it afforded no tangible point to the enemy, but rang numberless changes on a certain number of hacknied phrases, spiced by medicinal allusions—such as "Russell's purge," which epithet, accompanied by an action, extravagant beyond all human belief, seemed to throw several honourable members into hysterics. There was one passage, however, which we are tempted to afford our readers; it is a fair specimen of the oratory of the learned gentleman; it told irresistibly on the House; and is, moreover, a still better specimen of the repetition of stale jokes, which seem never wearying to the refined intellects composing our "collective wisdom." "I should like to hear, Sir," said the waggish Sir Charles, with a grin of defiance at the ministerial bench, "how the Right Hon. the First Lord of the Admiralty—that worthy limb of this amorphous body,

which has had the presumption to propose this confiscatory, compendious, and Cromwellian measure; I should like to see," he continued, starting from his original form of speech, "I should like to see the worthy and unanimous baronet on the hustings of Carlisle—("Cockermouth," shouted several honorable members). Well, Carlisle or Cockermouth, I don't care which—I'm not a North-countryman, and I don't understand or care about these geographical matters; but there we have the Right Hon, Sir James, the First Lord, on the hustings, and up comes one of his agricultural constituents, who, as I dare say, many country members know, have a great deal of radical —I don't use that word (turning round to Hunt, who sat just behind him) in a sarcastic but in a logical sense, though, at the same time, sarcastic (loud laughter.) Well, now, Sir James (and here Sir Charles, amidst loud laughter, threw himself into a loose attitude, as though imitating the easy confidence of the farmer), what have you done for us? Ye have taken off the malt tax!' 'No,' quoth the Right Honourable Baronet; (and the orator assumed the affected though manly appearance of Sir James Graham.) 'No,' quoth the farmer, 'then ye have taken off the assessed taxes?' 'No;' again quoth the Right Hon. the First Lord of

the Admiralty 'the House of Commons would not let me do that.' 'Then,' again quoth the radical farmer, rather a troublesome customer, 'What the devil have ye done?' 'Why, now, I'll tell you what,' quoth the Right Hon. the First Lord of the Admiralty, in his most insinuating tone—and we know what he can be when he likes—'I'll tell you what; I've not cut off the malt tax, nor the hop tax, nor the assessed taxes; the fact is, my friend, they would not allow me to do that; but I'll tell you what I've cut off for you—I've cut off sixty-two members!'" At every pause in this ludicrous display, accompanied as it was with gestures which set everything at defiance, the house shook with laughter."

In the latter part of the same year (October, 1831), Sir Charles again appeared as the petrel in the storm. He was Recorder of Bristol—and his reform speech had rendered him unpopular there, but with characteristic courage, and disregard of consequences, he entered the city during the ferment and fervour of that agitation with unnecessary show and state. The celebrated Bristol riots ensued, the Mansion-house was first stormed, then burned, together with the Custom-house, and Sir Charles narrowly escaped by a back door, and so evacuated the city.

Immediately after the dissolution, which followed the passing of the Reform Bill, Sir Charles retired from Parliament and public life, and devoted himself to the pursuit of his profession. In this he amassed a considerable fortune, and purchased large landed estates. It was when returning from visiting one of his estates near Maidstone, which he had recently purchased, that he was accidentally thrown from his carriage, and suffered a concussion of the brain. He died in a few days afterwards (on the 17th August, 1846,) in the 76th year of his age, and was interred in the Benchers' Vault of the Inner Temple.*

* Lord Campbell describes Sir Charles Wetherell as a high-minded but furious ultra-Tory (Life of Lord Lyndhurst, p. 16). Sir Charles Wetherell, at a social dinner party, at which Lord St. Leonards was present, with much humour sketched the characters of several of the guests, and he thus addressed Lord Campbell: "Then there is my noble and biographical friend who has added a new terror to death." (Misrepresentations in Lord Campbell's Lives, by Lord St. Leonards, p. 1).

SIR JAMES MACKINTOSH.

July, 1830.

FEW men have appeared before the world in so many different characters, as the subject of this sketch, and fewer still have engaged in pursuits so varied and opposite, achieving in each, a remarkable success. To pourtray the character of a mere lawyer, be he ever so eminent, might be an easy matter; on he moves in the beaten track, believing it would be perilous to his interests to swerve from the accustomed course, and dangerous to his black-letter reputation, to aspire to the character of the philosopher or statesman. The task is different when we approach a man distinguished as an author, a senator, an orator, a philosopher, and a judge. The fame which Sir James Mackintosh has acquired in any one of these pursuits, might be enough to swell the pride, or satisfy the ambition of an ordinary man. The utmost which can be given in these pages, is a mere outline of his

character ; to do ample justice to his merits will be the duty of the biographer, for whose labours on a comprehensive scale, the life of this eminent person will supply abundant materials, and long may it be before he is called upon to use them.

Sir James Mackintosh was educated at Edinburgh, and brought up originally to the medical profession; it is a remarkable circumstance, that the first production of his pen which attracted notice, was a medical thesis delivered by him fifty years ago. My legal readers would doubtless be startled at the idea of devoting some years to the acquisition of medical knowledge, as an introduction to the lighter study of the law. There is little fear of the practice becoming general. Fortunately for his fame, he abandoned the medical profession, and directed his attention to legal studies. He had a small patrimony, but no powerful friends to force his progress up the hill of fame and honor. This was, perhaps, the most lucky circumstance in his life; rank and wealth often produce the worst effects on the understanding; they remove that necessity, which is, after all, the great stimulus to severe and incessant mental labour; the education, also, which men of high rank generally receive, teaches them to rely upon the assistance of others, rather than on the vigorous

exertion of their own faculties. Great occasions call forth great men ;—the period of the French revolution, teeming with astonishing events, afforded an ample field for the exertions of genius. Edmund Burke, " clarum et venerabile nomen," stemmed the torrent of revolutionary fury, which threatened in its destructive course, to sweep away whatever was sacred and venerable upon earth—his reflections seized at once the attention of mankind; they achieved what armies could not accomplish, for they worked a counter-revolution in the minds of men. Political adversaries branded the " Reflections" with the epithet " declamation;" but the public were more convinced by the strength of the reasoning, than dazzled by the splendour of the diction. To enter the lists against an opponent such as Burke, required courage and ability rarely to be met with. Sir J. Mackintosh, then unknown, grappled in the exciting field of politics with the giant of literature, and escaped from the struggle, not only without defeat, but with success. The " Vindiciæ Gallicæ" evinced an honest and a manly purpose; the opinions of Burke were controverted with eloquence and spirit, and the cause of the revolution defended with consummate boldness. It is high praise to say, that when the

"Reflections" and the Reply are perused in succession, the reader would scarcely suppose the latter was the production of an inferior man.* The successful reception of the work, raised his name, and obtained for him a character and literary reputation. About that time there existed a debating club in London, of which the present attorney-general (Sir James Scarlett) and Mr. Perceval were members. Captivated by the "Vindiciæ Gallicæ," Sir J. Scarlett sought the acquaintance of Mackintosh, and introduced him as a member to the society; and thus had the merit of bringing the subject of our sketch into contact with some of the most

* Prior, in his life of Burke, alluding to the different replies published to the Reflections, observes:—"The Vindiciæ Gallicæ alone, was the production of a more sober inquirer, a scholar and a gentleman, who, though he then wrote upon politics with the dim flickering light of a closet philosopher, has since learned to judge and to act in a more practical spirit, chiefly by the teaching of that very master, whom he had ventured to oppose. Even from the first, however, he exhibited the confidence in himself of one who could afford to be at once bold and liberal in his opposition to the great orator,—who could advocate what he thought freedom to others, without madly assaulting the foundations of our own,—such a man was, and still is, Sir James Mackintosh, a statesman of the first class, who if not at the head of the party with whom he has so long and so vainly laboured, is certainly not justled from it, by any thing like superiority of mind among its more acknowledged leaders."

eminent men of the day.* Mackintosh now became a public man, increasing daily in character and reputation, and of literary fame he appeared to be most covetous. His intimate acquaintance with the ponderous volumes of the continental writers on jurisprudence, and his knowledge of international law, as extensive as it was minute, he resolved to communicate to the world in the popular shape of lectures; and with this purpose delivered an introductory discourse on the law of nature and of nations, which for clearness of reasoning, and beauty of language, has rarely been surpassed. The characters and pretensions of the different writers on this interesting but neglected science, were discussed with calmness and ability, and the temperate philosophical spirit which it breathed, proved that truth alone could have been the object of the author. Of the elegance of his descriptive powers, some idea may be formed

* Of Sir James Scarlett it may be mentioned, that he has ever cultivated with assiduity the society and friendship of the most scholarlike members of the bar, by whom his abilities could be best appreciated, and his interests most readily promoted. Through the same channel Mackintosh obtained a seat in the legislature, and undoubtedly it redounds to the honor of Sir J. Scarlett, that at a time when he could not possibly have been influenced by any sinister motive, he exerted himself on behalf of one known to him only by his integrity and genius.

from the eulogium which he pronounces upon the founder of his favourite science :—" So great is the uncertainty of posthumous reputation, and so liable is the fame even of the greatest men to be obscured by those new fashions of thinking and writing, which succeed each other so rapidly among polished nations, that Grotius, who filled so large a space in the eye of his contemporaries, is now perhaps, known to some of my readers only by name. Yet, if we fairly estimate both his endowments and his virtues, we may justly consider him as one of the most memorable men who have done honour to modern times. He combined the discharge of the most important duties of active and public life, with the attainment of that exact and various learning, which is generally the portion only of the recluse student. He was distinguished as an advocate and a magistrate, and he composed the most valuable works on the law of his own country; he was almost equally celebrated as an historian, a scholar, a poet, and a divine, a disinterested statesman, a philosophical lawyer, a patriot who united moderation with firmness, and a theologian, who was taught candour by his learning. Unmerited exile did not damp his patriotism ; the bitterness of controversy did not extinguish his charity. The sagacity of his numerous

and fierce adversaries could not discover a blot on his character, and in the midst of all the hard trials and galling provocations of a turbulent political life, he never once deserted his friends when they were weak. In times of the most furious civil and religious faction, he preserved his name unspotted, and he knew how to reconcile fidelity to his own party, with moderation towards his opponents." That Mackintosh did not publish his series of lectures has been matter of universal regret; no man was so competent to do justice to the subject, for, like Sir William Jones, "regarding the law as a science, he commenced the study of it on a wide and liberal scale. He compared the systems of ancient times with those of modern adoption, and with infinite labour he examined and collated the various codes of modern Europe." Sir William Jones had formed the plan of writing a treatise on each separate subject of the law of England, filling up the sketch which Blackstone had so ably traced. His incomparable Essay on Bailments, may possibly be rivalled, but can never be excelled. Had these enlightened men accomplished their intentions, doubtless they would have given to the world, works worthy of being ranked with the productions of our most eminent legal text writers. Scholarlike

lawyers are growing into disrepute; the knowledge of cases is substituted for the knowledge of principles, deep and various learning is now an unnecessary and dangerous acquirement, and a reputation for oratory may render a junior suspected by the attornies. The works of science are forsaken for the books of practice, and an apprenticeship with a pleader is the surest road to ambiguous fame. The necessity, however, of a liberal education is still ably maintained by one who unites in his own person, a profound knowledge of the law, with the polite accomplishments of the scholar.*

* "The object of a lawyer's acquaintance with the abstract sciences, and the writers of antiquity, is to learn to think with propriety, and to act with magnanimity, in the circumstances of life in which his profession may place him, and to acquire the art of expressing his sentiments with precision, simplicity, and good taste. It is not to excel in the legerdemain of the analyst, or to acquire a pre-eminent knowledge of tongues. . . . . Constituted as the system of academical education at present is, the future lawyer is employed at the university during the period of life usually spent there, in a manner infinitely more advantageous, than in the receptacles of an attorney's, or a special pleader's office, where the arts of litigation, and not the precepts of justice are inculcated. In the universities, the student will find leisure and encouragement to prepare himself for the exercise of his profession, by climbing up to the "vantage ground," so my lord Bacon calls it, of science instead of grovelling all his life below, and finishing his mean though gainful career, by ultimately attaining to the character of the pettifogger, described by Cicero,

Pitt was present at Sir James Mackintosh's celebrated introductory lecture, and is believed to have offered him the recordership of Bombay in consequence. This appointment, coming from Pitt, gave great distaste to Perry (the late editor of the *Morning Chronicle)*, and Doctor Parr, who vented his spleen by spreading a foul calumny against the character and honour of Sir James Mackintosh. Parr's memorable reply to Sir James, when indiscreetly vehement in his denunciations of O'Quigley, who was tried with Arthur O'Connor, and executed for high treason, shows the feeling he must have entertained towards him. "Sir," replied this unceremonious disciple of the Johnsonian school, "he was a priest, he *might* have been a lawyer; he was an Irishman, he *might* have been a Scotchman; he was a traitor, he *might* have been an apostate." When, on Sir James's return from India, he was offered a place in the ministry by Perceval, and refused it, principally on the ground of the Catholic question, Parr warmly admired him for his honesty, and regretted what he had said and done against him. And thus it is with other men as well as

'Leguleius quidam cautus, et acutus præco actionum; cantor formularum, auceps syllabarum.'"—Note to Fortescue, by Professor Amos.

Doctor Parr; to gratify a pique, or their own groundless prejudices, they do not hesitate to asperse the purest character, and afterwards endeavour to atone for their injustice and falsehood, by a late and unavailing repentance. The subject of this sketch, though frequently employed before committees of the House of Commons, on election cases, never enjoyed extensive practice, or high reputation as a lawyer; unacquainted with technicalities or practical details, he was, no doubt, intimately conversant with the history and principles of our law. His mind delighting in wide and expanded views, fitted him rather to discharge the nobler duties of an enlightened senator, than for the employments of a practising barrister.

His reply to Burke acquired for him so much popularity and fame, as to induce Peltier, a French refugee, when prosecuted, in 1803, for a libel on Buonaparte, to select him as his counsel. This was exactly the subject suited to the development of Sir James Mackintosh's peculiar talents; he seems to have been on the look out for such an opportunity, and to have been prepared for a display whenever it might occur. It was, upon the whole, splendid; not as a speech, but as an essay:—he showed a deeper knowledge of politics than of law; took a comprehensive survey

of the conditions of the different states of Europe; describing, in animated colours, the horrors produced by the grasping ambition of the French, and the enormity of their offences against the liberties of mankind. Peltier was totally forgotten; it was not the advocate who spoke, but the statesman who delivered a lecture. Unlike the vivid appeals of Curran—who never, in the moments of his highest excitation, forgot the interests of his client; never wandered merely to embellish, and who contrived to make his illustrations more touching than his serious eloquence, and more convincing than his arguments; *he* held up the subject closely to the minds of his jurors, and, as truth and nature prompted, endeavoured to delight, to terrify, or to persuade. He was infinitely superior to Mackintosh, as a forensic orator, however inferior to him as a writer of essays; he would not have dragged the jury round the world, requiring them to examine into systems of government, and to discuss their relative merits, with metaphysical nicety; but would have bound them to their own country, and fastened their attention upon scenes near at hand, daily and hourly passing around them. The English bar are, by no means, unanimous in thinking that Sir James's celebrated oration, was judicious; they seem

to think that his desire for display operated injudiciously to the interests of his client. That many of the descriptions, as, for example, his narrative of the invasion of Switzerland, are beautiful, no man of taste or feeling would venture to deny. It should likewise be remembered, that Lord Ellenborough, the presiding judge, a man of as large mind, and as correct taste, as ever did honour to the English bench, and who never indulged in false and unmeaning compliments, pronounced the highest eulogium on this oration. The concluding passage, more than any other, was calculated to rouse the feelings, and the pride of Englishmen. It was as follows:—

"In the court where we are now met, Cromwell twice sent a satirist on his tyranny to be convicted and punished as a libeller, and in this court, almost in sight of the scaffold, streaming in the blood of his sovereign, within hearing of the clash of his bayonets, which drove out parliaments with contumely, two successive juries rescued the intrepid satirist from his fangs, and sent out with defeat and disgrace the usurper's attorney-general, from what he had the insolence to call *his* court! Even then, gentlemen, when all law and liberty were trampled under the feet of a military banditti; when those great crimes were perpetrated on a high

place, and with a high hand against those who were the objects of public veneration, which more than anything else upon earth, overwhelm the minds of men, break their spirits, and confound the moral sentiments, obliterate the distinctions between right and wrong in the understanding, and teach the multitude to feel no longer any reverence for that justice which they thus see triumphantly dragged at the chariot wheels of a tyrant;—even then, when this unhappy country, triumphant indeed abroad, but enslaved at home, had no prospect but that of a long succession of tyrants wading through slaughter to a throne; even then, I say, when all seemed lost, the unconquerable spirit of English liberty survived in the hearts of English jurors. That spirit is, I trust in God, not extinct; and if any modern tyrant were, in the drunkenness of his insolence, to hope to awe an English jury, I trust and believe that they would tell him: 'Our ancestors braved the bayonets of Cromwell, we bid defiance to yours. *Contempsi Catilinæ gladios, non pertimescam tuos!*'"

The prophetic mind of Burke, whose knowledge of history amounted to a power of predicting the future, had foretold that the government of France would be seized on by a military tyrant, and that the liberty of

the world would be assailed; it might have occurred to Sir James, that when detailing, in nervous language, the rapid strides made by the French to severe and universal despotism, in contempt of the faith of nations, and the eternal principles of justice, he was pronouncing the best reply to the "Vindiciæ Gallicæ," and coinciding in the justness of the views entertained by his mighty opponent.

His judicial situation was uncongenial to his mind, and he regarded the time spent in India as lost to his literary life. Upon his return to England, he was offered the chair of moral philosophy in Edinburgh, now held by Professor Wilson; this honourable employment he declined to accept; preferring rather to indulge his parliamentary ambition, and unwilling to resign the homage that was paid to him at Holland-house, for the charms of his conversation. It is, however, considered by most people, and, I believe, by himself, that the chair of moral philosophy would have been the station in which his abilities would have shone forth most conspicuously; there he might have displayed to a willing and attentive audience, the stores of his learning, and the variety and exactness of his knowledge.*

* Metaphysics have been his favourite study; and his preface to a

His parliamentary career has been alike honorable to himself, and beneficial to his country. Although he has been stigmatized as a renegade, I have been unable to discover that by any act of his political life he ever deserted the party, which, in his youth, he had espoused.

His most honest and persevering efforts to improve the criminal law, have gained for him the approbation of all impartial men. Actions are better than words; and the repeal of one obnoxious law, or the enactment of one useful measure, will more certainly ensure a lasting reputation, than whole volumes of speeches, be they ever so brilliant and imposing. He followed the course marked out by the illustrious Romilly, and has enjoyed the exquisite satisfaction of living to behold the triumph of his principles, and to reap the reward of his long and meritorious exertions. And when extravagant eulogiums are lavished on Mr. Peel, it ought, in justice, to be remembered, that by the unwearied efforts of Romilly and Mackintosh, public

volume of the Encyclopædia, after the manner of Dugald Stewart's preface, relative to the progress of moral philosophy, in this country, is considered, by competent judges, to be the best thing he has ever done. This preface is not yet published; forty copies only having been distributed. (1830).

opinion was brought to bear upon the subject, and to demand wise reforms, which could no longer, in safety, be withheld. The minister who employs his power to satisfy the public voice, deserves high praise; but the higher praise is due to the men of superior genius, who first commence the struggle against prejudices almost inveterate, and against errors consecrated by antiquity, striking out the path to a wise and moderate reform of a vicious system, into which men of more humble pretensions, might venture, without the hazard of going far astray.

It has been the practice to extol Sir James Mackintosh as a parliamentary orator; but if we are to judge of a speaker by the effect which he produces, he cannot be ranked amongst those of the first class. Sir James does not make that impression upon the house, which, from his talents and experience, one might be led to expect. His speeches in parliament are too philosophical; he states qualifications, and limitations, instead of taking a broader, but direct and more intelligible view of questions. Members regard him as one who comes down to teach them, and are displeased with his declamatory style, his pompous delivery, and swelling diction. They consider that he has provided himself with a speech well conned over, and committed

to memory, and which, at all hazards, he is determined to inflict upon them. Constituted as the House of Commons now is, it must appear almost miraculous, that Sir James Mackintosh is not more highly prized for his senatorial eloquence—no man in the house has more various and extensive knowledge; and no man prepares more sedulously on the subject under discussion: and when it is remembered that Sir Robert Peel is said to be an orator, that Mr. Goulburn, particularly, is allowed to stammer on, and that Mr. B——— is cheered by those whose only eloquence consists in the repetition of the words "hear him, hear him," the rank of Demosthenes should be allotted to the subject of this sketch. However, in the language of the lawyers, we have *precedents* for the comparative failure of greater men than Sir James Mackintosh; *Burke was not listened to;* he had even the soubriquet of the dinner-bell, because there was a general rising to depart when he began to discourse—this speaks volumes as to the capacity and judgment of the then "collective wisdom" of the nation, demonstrating a proposition that the most credulous might be disposed to doubt, namely, that towering genius, extraordinary learning, and unrivalled powers of language, are not necessary to the formation, and may be prejudicial to the fame

of a parliamentary orator. The senators want facts, and have not time to investigate metaphysical subtleties: in the way of facts, they can take the most exquisite enjoyment in listening to Mr. Hume; *he* can always inform them of the exact price of soap, leather, beer, and candles, and will not offend their ears by grammatical accuracy, by elegance of language, or any troublesome philosophical reflection. Posterity, however, does justice to the merits of men, the people who refused to listen to Burke, are all forgotten, as they ought to be, whilst *his* fame will be had in everlasting remembrance.

In personal appearance Sir James Mackintosh is plain; of the middle stature; neither dignified nor commanding; his voice is a little harsh, and his accent still savours of the Scotch; he speaks with emphasis and clearness; his action is graceful, and for so old a man, surprisingly energetic. Those who have heard him denouncing Don Miguel, were convinced that his advancing years have not weakened his intellect, nor deprived him of the fire and eloquence of youth; that he can still feel warmly, and speak strongly; and that his heart beats high as ever with honest indignation, in exposing the offences, committed by the great villains of the world, against the liberties of mankind.

Sir James Mackintosh has adhered with fidelity to his party—no small merit in these days of political tergiversation. Had he chosen to forsake the friends of his youth, and to join the Treasury bench, he would, doubtlessly, have been received with acclamation, and loaded with favours.

He enjoys, as might be expected, the most enlightened society in England; his conversation is neither declamatory nor dictatorial; he makes no parade of his learning; his temper is cheerful, and his manners mild and unassuming.

The scenes in which he has borne a part, will perpetuate his name, a name endeared to us by the recollection of those who were the friends and rivals of his youth; men who, in sober earnest, have no equals now —the strength and logic of Pitt, the energy of Fox, the brilliancy of Sheridan, and the sublimity of Burke, are no where to be found—"the age of sophists and calculators is come." Sir James Mackintosh, verging towards the age of "three score years and ten." may well be pronounced *ultimus Romanorum*, the last of the illlustrious men who instructed senates, enlightened nations, and dazzled mankind by the splendour of their genius. His political opponents, considering him merely as an author and a scholar,

will find enough in his character to honor and admire.

NOTE BY EDITOR.

April, 1870.

THE genial sketch of Sir James Mackintosh was written when the subject of it had passed the meridian of life, and was rapidly approaching towards what may be regarded as an untimely close. He survived its publication for the short space of two years, and died in the full splendour of his well-earned reputation. Sir James was called to the English Bar in 1795, and appointed lecturer at Lincoln's Inn in 1799. Here he delivered the course of lectures on the Law of Nature and of Nations, not to students only, but to peers, ministers of state, members of Parliament, eminent judges, and the most distinguished men of letters of the day. Of these lectures all that remains is this preliminary essay. Its lucidity, beauty, and eloquence naturally attracted the mind of an enthusiastic student, such as Mr. Whiteside. It seems to have almost bewitched the impressionable mind of Thomas Campbell, and betrayed him into language bordering on the extravagant, even though coming from a poet. He says

of it:—"If Mackintosh had published nothing else than this 'Discourse,' he would have left a perfect memorial of his intellectual strength and symmetry; and even supposing that that essay had been recovered only imperfect and mutilated—if but a score of its consecutive sentences could be shown—they would bear a testimony of his genius as decided as the bust of Theseus bears to Grecian art among the Elgin marbles."

A very excellent specimen of the essay is given in the passage on the character of Grotius, extracted in the sketch. I venture to add another, the concluding sentence of the essay, which might be taken to be descriptive of the character of Mackintosh himself:—"To discern one new link of that eternal chain by which the Author of the universe has bound together the happiness and the duty of His creatures, and indissolubly fastened their interests to each other, would fill my heart with more pleasure than all the fame with which the most ingenious paradox ever crowned the most ingenious sophist."

In the field of general literature Sir James Mackintosh was, probably, the superior of Macaulay as a critic and essayist. His political essays, published in the *Edinburgh Review*, and afterwards collected, are well

known; but some of his compositions, thrown off during his homeward voyage from India, and given in the biography of his son, are, perhaps, not so generally remembered. They contain beautiful pencil sketches of eminent, literary, and political men, including Hume, Johnson, Wilkes, Lord Mansfield, Swift, Somers, Franklin, Sheridan, Louis XIV.* His journal also contains what every scholar must acknowledge to be a most interesting and critical review of the progress of the English language, as regards composition and style, from the earliest to its latest periods.

Sir James Mackintosh has left us an abbreviated history of England and a fragment of the history of the French Revolution; but in neither of these has the performance been generally deemed altogether successful. He wanted the gift of narrative—the faculty of developing events in a regular and attractive series, having regard not only to their consecutive order, but to their relative importance and mutual bearings, as cause and effect, on each other. However, he did good service to history in that, the papers which he collected, intending to use them in a more extensive work, have

* See Life of Sir James Mackintosh, by his son, vol. 2, p. 173.

been, on his death, handed over to Macaulay, and form no inconsiderable constituent of his charming history. Lord Macaulay acknowledges the obligation frankly—"I have never seen, and I do not believe, there anywhere exists within the same compass so noble a collection of extracts from public and private archives."

But the literary reputation of Mackintosh with posterity will, probably, rest chiefly on his dissertation on the Progress of Ethical Philosophy, prefixed to the Encyclopædia Britannica, and since published in a separate form by Dr. Whewell. Lord Abinger tells us that Sir James often said of himself—that he was born to be the professor of a university. He adds:—"Happy and for ages celebrated would have been the university which had possessed him."

The Discourse, written amidst the distractions and pre-occupations incident to political life, developes the extraordinary powers of mind, the breadth of view, tolerance, and impartiality of Mackintosh. It is also remarkable for the kindly and cordial recognition of the merits of our fellow-countrymen, Hutcheson and Berkeley, who were early pioneers in this field of ethical philosophy.

He correctly accredits Hutcheson with having been

the propounder and expositor of a philosophy of mind more noble than that of Shaftesbury or Hume—founding it on a moral sense or conscience, independent of any act or state of the understanding, and superior to the calculations or conclusions of self-love. In this his views were coincident with those of Bishop Butler, but were more clearly expressed, and with ampler illustration, while their originality is vindicated by the fact that the second edition of Hucheson's "Inquiry" was published in the same year with the first edition of Butler's Sermons. Mackintosh declares Hutcheson to be the father of the speculative philosophy of Scotland, and the suggester of Adam Smith's beautiful speculations in ethics.

His sketch of Berkeley, as "the great metaphysician," is not less appreciative. Speaking of his alleged "immaterialism," as expressed in his "New Theory of Vision," he says:—"Those who believe it to be sceptical, or implying any disturbance in the senses, or tending to disturb reasoning or alter conduct, are men who are altogether without sagacity." The work itself Mackintosh regards to be chiefly valuable as a touchstone of metaphysical sagacity. His description of Berkeley, as the admirable Crichton of his day, is this:—"Ancient learning, exact science, polished society,

modern literature, and the fine arts contribute to adorn and enrich the mind of this accomplished man." He adds:—"It is one of the highest boasts that, though of English extraction, he was a true Irishman, and the first eminent Protestant after the Revolution who avowed his love for all his countrymen." Speaking of what he calls "the exquisite grace and beauty of his diction," he says:—"His works are, beyond dispute, the finest models of philosophical style since Cicero; perhaps they surpass those of the orator in the wonderful art by which the fullest light is thrown on the most minute and evanescent parts of the most subtle of human conceptions. Perhaps he also surpassed Cicero in the charm of simplicity—a quality frequently found in Irish writers before the end of the eighteenth century—conspicuous in the masculine severity of Swift, in the Platonic fancy of Berkeley, in the native tenderness and elegance of Goldsmith, and not withholding its attractions from Hutcheson and Leland, writers of classical taste, though of inferior power."

Mackintosh's flattering picture of Irish celebrities was particularly attractive to the writer of our sketch. It was a subject on which he was, and no doubt, is nationally proud. At a future time it fell to his own lot to discourse on the same theme in the

24078

presence of men eminent in literature and science, including Sir Archibald Alison, Thackeray, Monkton Milnes, Sir Lytton Bulwer, &c.* Mr. Whiteside was called upon to respond to the toast of "The Literature of Ireland," and the following passage I think I may appropriately introduce here :—"The Literature of Ireland. It has often been imputed to the writers of that country that, while they have evinced abilities, and even occasionally genius, their books have been marked by bad taste, and have been disfigured by false ornament, by extravagance; and that Irish writers have, in fact, exhibited the faults of a vicious style. Yet, if we refer to the Irish authors who flourished in the eighteenth century, we may, perhaps, doubt the justice of that censure. The severe sense and masculine simplicity of Swift, the chaste discourses of Hutcheson, the grace and beauty of Berkeley, not less remarkable than his originality and depth, the judicious efforts of Parnell and Steele, the classic elegance of Leland, the touching pathos of Goldsmith, the imperishable productions of Burke, which, however magnificent, combined the useful and the splendid, and were ever true to nature, redeem the literary character of Ireland. We have had divines of

* Anniversary Meeting of Royal Literary Society, 1849.

massive learning and ability, and one legal writer at least, Sullivan, who was hardly inferior in perspicuity and elegance of style to your Blackstone. The genius of some of those whom I have enumerated none will deny; but they are, perhaps, more remarkable for the justness of their conceptions, for the strength and purity of their language, for a sound judgment and healthy taste. Their compositions are worthy the noble language in which they wrote, and the glorious literature to which they have added immortal contributions. The nineteenth century began in Ireland in darkness and terror; may it close in the light of civilization and peace. Literary men had then but an indifferent market in their native country; they naturally sought encouragement, and they found it here. The talents, the industry of many Irish writers have been thenceforth devoted to English periodicals and to publications of a more enduring character. We have had within the last forty years a true poet, who has preserved the national legends in delightful verse; the national music has been embellished by the lyrics of Moore. The sweet tones of that music are dear to the Irish heart; not the less so that they awaken melancholy feelings, for such feelings are best suited to our national history. During the same interval of

time the national manners have been portrayed and the national faults censured by the inimitable Edgeworth, whose truthful pages reprove the caricatures which have since, under the title of 'Sketches of Ireland and the Irish,' been drawn of both. Others there are whose fortunes have been cast in their native country; amongst them Banim, Griffin, Carleton, have described, with admirable tact and power, the virtues and vices, the moral and physical condition of at least two provinces in Ireland, but slightly colouring painfully interesting facts more startling than fiction. Sheridan Knowles, while stimulating the imagination by his impassioned verse, has afforded, and ever will afford, rational entertainment to thousands; and Charles Lever, whose name awakens happy recollections—or Charles O'Malley, if you will—has exhibited on many a pleasant page, native racy humour. The antiquities of Ireland have been, by Petrie, explored with industry, and expounded in a rare spirit of truth and of good sense. The poetic translator of Faust, Anster; Dr. Miller, author of the Philosophy of History; Dr. Romney Robinson, astronomer, poet, and philosopher, are a credit to the literature of their country. In the exact sciences Sir William Hamilton, Lord Rosse, and one whose loss I must ever deplore, M'Cullagh, taken

in the very vigour of his genius 'from the evil to come,' have, under no very encouraging circumstances, pursued their researches and their discoveries with ardour, and with signal success. The writings of these men are calculated not merely to amuse, but to make us reflect; and we may hope that, when our countrymen learn to think soundly, they will act wisely. Would that a taste for wholesome literature were diffused, universally diffused through Ireland, and that all her people were in a condition to cultivate and enjoy it; for it soothes, civilizes, reconciles, abates prejudice, acknowledges no party, stoops to no faction, dignifies, elevates, and adorns individuals and nations. Men of all professions and pursuits are bound by the attractions of literature, as in a spell. Disappointed ambition flies to it for consolation; the successful politician will resign the intoxicating excitement of polities for its tranquil pleasures; the soldier lays aside his sword, that with equal success he may wield the pen; the statesman prefers to the applause of senates the lasting renown which success in literature can give; and, what seems most astonishing, it can even console the lawyer for loss of fees. While literature does so much for these classes, they, on the other hand, confer honour upon it; for when busy men, engaged in the

affairs of life, cultivate letters, they do literature an essential service by proving to the world its utility."

Mr. Whiteside has noticed Sir James Mackintosh's merits as a law reformer. He was the able and philosophical follower of Romilly in his noble career of the amelioration of our criminal jurisprudence; and on Romilly's death, in 1817, his mantle appropriately descended on Mackintosh. Sir Robert Peel has been popularly considered the author of the great reform, which, as a minister of state, he carried into effect. But it is to the eloquent essays, in the form of speeches of Mackintosh, that the conception and adoption of these measures is, after Romilly, mainly due. There were on the statute-book some 200 felonies punishable with death when they commenced their career. It was a capital offence to cut down a hop-vine or tree in a gentleman's park, to cut the head of a fish-pond. True, the actual penalty of death had not been enforced in respect of the greater number of these felonies for nearly a century past; but on each conviction the awful sentence of death was recorded. Sir James Mackintosh was not, however, in favour of the total abolition of capital punishment; he held the right of inflicting that punishment to be a part of self-defence,

with which societies, as well as individuals, are endowed.

There is an interesting notice of Sir James Mackintosh's political life in a letter from Sir James Scarlett, printed in the Life of Mackintosh, given by his son. It appears that from his first entrance into Parliament he associated himself with the Whigs, whom he served faithfully and well, and from whom he received signal ingratitude.

The "Vindiciæ Gallicæ" Sir James Scarlett happily describes as an attempt at once ingenious and profound, to justify the first steps of the French Revolution upon the theory of the British constitution, and thus to refute Mr. Burke upon his own principles.

When Mackintosh was proposed as a candidate in a debating society, that reckoned amongst its members men who afterwards became distinguished, including Mr. Percival, Lord Tenterden, Lord Lyndhurst, Lord Bexley, and others, Mr. Percival so admired the "Vindiciæ Gallicæ," that he canvassed for his admission. Shortly after this, the lucrative post of Recorder of Bombay fell vacant, and was offered to Mackintosh by the Minister of the day, Mr. Addington. The selection was creditable to the Tory Minister, who stipulated for

and received no political allegiance in return. But Mackintosh, in accepting the office, incurred the charge of infidelity, secretly insinuated from amongst his Whig friends. It is, says Sir James Scarlett (who smarted under the same injustice himself, according to his son-in-law, Lord Campbell)—it is the justice of political faction to be more rigorous in exacting sacrifices from their adherents than generous in rewarding them.

He was promoted to the office of Judge of the Admiralty in Bombay in 1806, and returned home in 1812. When he arrived he found his old friend, Mr. Percival, at the head of public affairs. Percival lost no time (from 25th April to 8th May) to offer him a seat in Parliament, with an ultimate view to his being placed at the head of the Board of Control, for which his Indian experience had naturally adapted, and presumably qualified him. Mackintosh, loyal to the Whig party, declined the kindly offer in a courteous letter, which Mr. Percival was destined never to receive; for on the same day on which the letter was written Mr. Percival was shot by the assassin, Bellingham.

Fifteen years after, when the Coalition Cabinet of George Canning was formed, Mackintosh might fairly have found a place. Canning expressed surprise that the conductors of the negociations on the side of the

Whigs did not mention the name of Mackintosh. He was named a Privy Counsellor, as a *solatium* of neglected aspirations.

Finally, in November, 1830, when his friends the Whigs, under Earl Grey, attained to the command of the entire offices of the State, a subordinate and comparatively insignificant place at the Board of Control was the reward of a long life of merit and exclusion; the same Board, over which in 1812 he might have presided as Chief, had he not declined to abandon his party. Sir James expressed no resentment at this neglect, and therefore (as Sydney Smith expresses it) was finally "pushed into such situations as fall to the lot of the feeble and delicate in a crowd."

Sir James Mackintosh died on the 22nd of May, 1832, in the 67th year of his age.

EARL GREY.

April, 1831.

By one of those sudden changes in the administration of the Government, which public opinion can accomplish in a free state only, Earl Grey has assumed the Premiership of England. The rapidity of this political movement was remarkable—in a single week the Wellington ministry was displaced, and the administration of Lord Grey quietly settled in its stead. The Noble Earl has seized the helm of state, at a crisis memorable in the history of the world. Every day we receive tidings of fresh revolutions, of ancient dynasties overthrown, and ancient wrongs avenged. At such an eventful moment it may not be unuseful to examine, even briefly, the merits and conduct of the minister who wields the destinies of England, and thereby influences those of Europe, to consider whether

he possesses the courage, wisdom, ability, and goodness, requisite for the mighty task he has undertaken.

Earl Grey was the friend and rival of statesmen worth one hundred such as now-a-days are; individuals, who, at a time fruitful in the production of great men, were celebrated for wit and learning, eloquence and knowledge, and for those loftier attributes of the soul which elevate and dignify mankind. I have never looked upon this noble person, or heard lessons of wisdom from his lips, that I have not felt my respect increased, and my admiration quickened, by the reflection that he has mingled in the same debate with men whose names are imperishable in the history of their country; that he was not obscured by the soaring genius of Burke, nor eclipsed by the impassioned oratory of Fox; that he has stood up against the dreaded enemy of Napoleon, the haughty and impracticable Pitt, and came forth unscathed from the conflict.

It is not necessary, in a sketch of this description, to allude in chronological order to facts which can at most be only slightly touched. I would, therefore, refer at once to the debate in the Lords, in May, 1827, in the course of which Earl Grey pronounced his celebrated philippic against Mr. Canning, for the purpose of extracting a sentence which expresses a fixed intention

not to mingle again actively in public affairs—a determination which it is the prevailing fashion for Lords and Commoners to adopt, only to abandon at another and more convenient opportunity. It is as follows:—"Those who had done him the honour to attach any importance to his opinions, were aware that he had for some years been withdrawing himself more and more from a direct interference in the politics of the country. As long, however, as he did remain, he was anxious to be in that situation in which he could do what he considered most good. To take a more active part in public life, was quite out of his intention, *non eadem ætas, non mens.*" Strange, that some years after, he should have discovered that his age was fresh enough, and his understanding vigorous enough, to enable him to take a more active part in public life, and to accept the very office for the assumption of which he had so unsparingly lashed his brilliant, but too sensitive opponent. That speech, it was said, more than any other event, wounded the pride of Canning, and hastened his dissolution; and yet there was not an intemperate, or violent expression throughout the whole of it; on the contrary, it was cold and dignified, emanating *apparently* from a strict sense of duty alone, without any admixture of pride or envy. But it contained bitter

accusations, for the controverting of which the shafts of wit or the powers of eloquence, were alike unavailing—he declared Canning to be a friend of corruption —an enemy to religious toleration—an enemy to reform—and an enemy to civil liberty; and then, repeating the words above given, coolly sat down. The scene is thus graphically described in "Blackwood" for February, 1828, by one of the ablest contributors to that excellent magazine, though, perhaps, somewhat highly coloured by the party zeal of the writer:—"The newspapers of the day give no adequate idea of the wonderful effect of Lord Grey's speech of the 11th of May. While he was speaking and pouring forth invectives, like a torrent of bitter waters, full upon Canning's devoted head, the House of Peers, which was extremely crowded, hung with breathless attention on his words, and when he had concluded, no man rose up to gainsay that which he had spoken. Mr. Canning's party stood aghast at the fearful castigation of their leader and the Tories felt that anything more would be superfluous. In a few minutes the house was empty—men's minds were too full of what they had heard to allow them to address themselves to the ordinary business of the House, and it adjourned almost immediately, notwithstanding the earliness of the hour. The news flew

about as swift as the wind, that Lord Grey had destroyed Mr. Canning in the House of Lords, and it soon reached the Premier himself. The iron entered his soul—he found he had climbed a pinnacle, only to be the more conspicuous to scorn—but he was not a man to sit down and weep under this mortification. His bitter thoughts lashed him into fury.

> "'Tis not in words to tell the power,
> The despotism, that from that hour
> Passion held o'er him."

It was reported at the time that he solicited a peerage from the king, that he might take vengeance in the Lords upon his relentless assailant.

His lordship when Mr. Grey, and but a youthful member of the House of Commons, ventured to engage in acrimonious contest with Mr. Burke, who, irritated by the vexatious behaviour of Mr. Grey, in casting up against him his own early speeches in favour of the Americans, frequently suffered his passion so far to master his judgment, as to indulge in coarse and personal vituperation, discreditable to his taste and genius. The following conclusion of a speech of Burke's in 1793, to which the then Mr. Grey replied, may startle those who have been accustomed to believe that whatever fell from his lips was chaste and classical:—"Gentlemen who

were so charmed with the lights of this new philosophy, might say that age had rendered my eyes too dim to perceive the glorious blaze. But old though I am, I see well enough to distinguish that it was not the light of heaven, but the light of rotten wood and stinking fish —the gloomy sparkling of collected filth, corruption, and putrefaction.

> 'So have I seen, in larder dark,
> Of veal a sparkling loin,
> Replete with many a brilliant spark
> As sage philosophers remark,
> At once both stink and shine!'"

Mr. Grey answered boldly—"The opprobrious terms of reproach made use of by Mr. Burke, without proof of any kind, might be equally well repeated by a parrot, it could pronounce the word 'monsters,' it could also say 'Brissot, the most virtuous of pickpockets.'" His sentiments, about this period, were frequently repeated with regard to the partition of Poland, which measure, and the combination of despots by whom it was perpetrated, he condemned in the most unqualified language. If he still retain the honest opinions of his youth, touching that detestable act of perfidy and rapine, he will scarcely allow the principle of non-interference to be infringed for the purpose of crushing the brave

Poles, and suppressing their noble aspirations for their long-lost freedom. In a debate in the same eventful year, Mr. Grey professed himself an ardent admirer of Dr. Priestly, and warmly eulogised his character and conduct; and while he justly denounced the rabble of the time, who, in their blind fury, destroyed the property of the intemperate and vacillating philosopher, he committed himself by asserting that in no instance did the writings of Priestly tend to the disturbance of social order or the infringement of civil liberty; different was the opinion of an illustrious historian, who, in a note to his immortal work, recommends to public animadversion two passages in Doctor Priestly, which betray the ultimate tendency of his opinions. "At the first of these* the priest, at the second† the magistrate, may tremble." Possibly were the noble Lord now interrogated on his bold assertion as to Priestly's principles, he would say it was a fanciful notion of his youth, unthinkingly adopted, and which together with his boyish notions about Reform, he has long since and wisely abandoned. He seems to have been of a prophetic turn of mind, and amused himself with predictions upon his entrance into public life, soon after the

* History of the Corruptions of Christianity, vol. 1, p. 275-6.

† Ib. p. 484.

American war, none of which were ultimately fulfilled; he predicted the ruin of England if Parliament was not reformed, but England is not ruined, and Parliament is not yet reformed. The French revolution was next to spread happiness over the face of the earth, but *that* revolution, unlike the one by which it has been succeeded, spread horror and desolation. His next prediction was, that the British armies would be ruined in Spain, and that Bonaparte would subdue the world; but the British armies triumphed over the French, and the splendid despotism of Napoleon has been overthrown.

Of all Earl Grey's earlier opinions none are regarded now with such interest as those which he is known to have entertained upon the subject of Parliamentary reform. It is necessary for the public to understand with accuracy what those opinions were, and to see whether, even in a modified degree, they can be acted upon at the present moment. His plan of reform has been constantly referred to, as also his exposé of what he then considered the defects in the representation of the country, which have become, as it were, a text-book for other reformers, some of whom, in their wisdom, have been disposed to proceed to greater lengths in their radicalism, even than the premier himself. The radical press, accordingly, have been in the habit of applauding his lordship for his patrotism and manly

spirit, upon the occasion of the presentment to the Commons of the petition, got up by a society, called "the Friends of the People," praying for a sweeping change in our representative system. If the fitness of Earl Grey for the task of a sensible reformer, were to be estimated by the tone and reasoning of that petition, it would be difficult to select in the whole empire a person more disqualified, Cobbett and Hunt not excepted. The petition was grounded upon the most dangerous and mistaken views, which the petitioners modestly called "*principle*," proportioning the representatives to the number of constituents. Nothing would be more easy than to demonstrate the utter absurdity of this monstrous doctrine; it is upon the face of it glaringly unconstitutional, for it tramples upon the fundamental principle of representation—property. Lord John Russell, whom no man could accuse of leaning to the side of corruption, in his temperate and philosophical work on the British Constitution, avows, in his chapter upon the House of Commons, that the notions of Earl Grey, as contained in that petition, are unsound and indefensible. To the trashy complaints of these "Friends of the People," Lord John gives the following convincing and excellent reply:—"You complain of the formation of the House of Commons, such as it has existed from the revolution to the present time.

You prove that the frame of our government has been from that time a corrupt combination for private purposes. Now our fathers and our grandfathers have told us, that during that time they were very free and very happy. Their testimony is confirmed by the wisest philosophers, the greatest lawyers, the most enthusiastic poets of the time. Your theory goes to overthrow the testimony of Blackstone, Montesquieu, Voltaire, Thompson, Cowper, and a hundred others, who have declared England to be in their time in the enjoyment of complete freedom. Now government is matter of experience, and not of speculation; we will, therefore, rest contented with things as they are." Fox, sensible of the weight of this objection, put, in 1797, the question on different grounds; he proposed to recur to first principles, and re-constitute the state—which, although revolutionary, had, at least, the merit of being candid and intelligible.

Earl Grey has solemnly recanted these unwise opinions, and deserves praise, but in a very moderate degree, for the abandonment of notions which the sensible portion of the community pronounced to be untenable and irrational. Still it is useful to recur to these events, for they assist us in forming a correct judgment upon the character and intellect of the

man. Unquestionably his Lordship's friends may, with truth, assert that inconsistency is preferable to blind obstinacy in error; but it is as certain that he cannot deserve a lofty panegyric for his comprehension and sagacity, who, at the age of manhood, embraced opinions upon a momentous subject, which, in after life he felt ashamed to avow, and unable to maintain. His present intentions upon Reform may, perhaps, be fairly collected from the substance of a speech delivered by him on a motion for a committee on the state of the nation in 1810. "The question of Reform (he says) has long engaged my most serious contemplation. At an early period of my life, I certainly took up strong opinions upon this subject, and pursued them with that eager hope and sanguine expectation so natural to the ardour of youth. I will not say that there may not have arisen some difference between my present sentiments and former impressions; still, I beg leave to assure your lordships that the *general opinions* I then formed, I have not in my maturer age, seen cause to change; and that whatever distinction exists between my early and my present views of reform, on its great grounds that question has not been abandoned by me. Still, after the most serious and dispassionate consideration, it is my conscientious

opinion, that much good would result from the adoption of the salutary principle of reform, gradually applied to the correction of those existing abuses, to which the progress of time must have unavoidably given birth, taking especial care that the measures of reform to be pursued should be marked out by the constitution itself, and in no case exceed its wholesome limits. But as I never have, so I never will rest my ideas of salutary reform on the grounds of theoretic perfection. While I shall ever be ready to correct, by the fixed principles of the constitution, an admitted inconvenience, where that is practically felt, I continue to disapprove of all those general and vague speculations in which some men would wish to engage." He proceeds to fortify this opinion by the authority of Mr. Fox, who compared the constitution to a house, as Blackstone did to a gothic castle, which was to be altered to suit the taste and convenience of the proprietor. Lord Grey, of course, did not mean the authority of Mr. Fox in 1797, when he wished to remodel the constitution, but his authority at some other time. And it is in truth instructive, in looking over the speeches of great parliamentary orators, to observe that individuals professing different political sentiments, may suit themselves with a speech of the

same speakers, according to their peculiar fancy. The immaculate electors of Preston, who boast of having returned the patriot Hunt, may cry for universal suffrage; an intelligent public will resist the levelling doctrine which would give the whole power to money and to the multitude, and so disfranchise the middle class, the most disinterested, the most independent, and unprejudiced in the state. The interest of the middle class should be strengthened, not weakened by the intended reform; and those who cry aloud for the abolition of *all* boroughs, would do well to bestow some consideration upon the matter, to read a little, and think a little. If such persons could be prevailed upon to look into the valuable book on "Public Opinion," by Mackinnon, they will there find it proved to a demonstration, that boroughs do represent important interests in the state—the monied interest, and personal property, which constitute a vast mass of the nation's wealth. And what is of more vital moment still, that if boroughs be abolished, the aristocracy of intellect must inevitably be excluded. This is evident from the fact, that the most eminent men who ever adorned the senate, and gave strength to its councils by their wisdom, and glory to its debates by the splendour of their eloquence —the men of professional fame, and literary distinction

—have sat for boroughs. How can such men effect their entrance into the senate, not possessing wealth, or family connections? or can their places be supplied by rich boobies, who may buy their seats, or demagogues who may delude the rabble, and wheedle them out of their votes for the base purposes of faction?

On the occasion of the Queen's trial, Earl Grey took a prominent part. Throughout the proceedings he inveighed with bitterness against the conduct of the ministry; and while acting, apparently, from a strict sense of duty only, manifested the zeal of the partizan. His speech upon the evidence was a masterly performance, not distinguished for florid oratory, or sounding declamation, but displaying rather the acuteness and logic of the lawyer, accustomed to sift and analyse perplexing and conflicting evidence. His peroration was far from being brilliant, yet it was impressive, and carried with it an air of sincerity and conviction, which gave weight and dignity to every word he spoke. He disclaimed then, as on many other occasions, the possibility of his being influenced by popular clamour.

Several sketches of the political career of the noble earl having appeared in the newspapers of the day, we think it unnecessary to go further into the subject at present, than to observe that he cannot be charged

with inconsistency for his coalition with Lord Grenville; the desertion of former opinions can be ascribed with fairness to the latter noble lord only. The union never could have been cordial, for the subject of this sketch in his political career, was the most opposite that is possible to be conceived to Lord Grenville—they were absolutely political antipodes. And the time was, when the great aristocratic lord, then Minister for Foreign Affairs, would, as a political writer has observed, have gladly seen Mr. Grey, and some dozen of his companions, sent out of the country as men subversive of peace and good government. But

> "Time, whose gentle influence makes a calf an ox,
> And brings all natural events to pass,"

brought about that unnatural coalition, and the two noblemen stuck together as the shirt of Nessus did to the body of Hercules. Earl Grey was one of those who formed the ministry denominated "All the Talents;" a ministry most unfortunate in their measures, and who lost, while in office, the fame which, as individuals, they had deservedly gained while in opposition.

Although jealous of his rank, and resolved "to stand by his order;" the title he bears is of very modern creation; for it he is indebted to the bravery of his father in those wars, the commencement and continu-

ance of which the present noble lord uniformly condemned.*

In person he is tall and commanding, his head is partly bald, and his countenance, although severe, is dignified and intellectual. Age does not seem to have injured his health, or weakened his constitution; his features are placid, but convey a haughty expression; he is remarkably thin, and his height increases in appearance the spare habit of his body; his action is not graceful, for he has acquired the practice of hiding one hand beneath his coat-skirt, as if standing near the

* Earl Grey is the eldest son of General, afterwards Sir Charles Grey, K.B., who was an aide-de-camp to Prince Ferdinand at the battle of Minden, and held a command during the American war. At the breaking out of the war with France, in 1793, he assisted at the relief of Ostend and Nieuport, and having been appointed commander-in-chief in the West Indies, succeeded in reducing Martinique, St. Lucie, and Guadaloupe. In 1801, he was created Baron Grey de Howick, and in 1806, Viscount Howick and Earl Grey. He was descended from a very ancient family in the North of England. Sir Charles was the younger brother of Sir Henry Grey, Bart., who, dying without issue, his title and estates descended to the present Earl Grey, who was bred to the Bar; but in consequence of the intention of his uncle, Sir Henry, to constitute him his heir, he ceased to devote himself to the practice of his profession; and becoming early in life a member of the House of Commons for the county of Northumberland, he rapidly attained eminence as a speaker in Parliament. He is somewhat older than the Duke of Wellington, being about sixty-six, the Duke will be sixty-two in May next. (1830.)

fire, which is very ungraceful, but at times he extends his arms to their full length, and then his attitude becomes manly and imposing. He frequently throughout his speech, advances from his seat towards the table, and retires again; but with him this is an easy movement, unlike the awkward motions of Sir Robert Peel, who paces at regular intervals, and with invariable sameness, between the table and the bench, poising one leg upon his toe, lifting up his hand and laying it down again with the regularity of a pendulum. The tones of Lord Grey's voice are clear, but not varied or harmonious, and his utterance is distinct and firm; although when last I heard him on Lord Wynford's motion, his voice faltered, and he stammered in speaking; but this possibly might be owing to the effects of a severe cold under which he evidently laboured—to me it seemed as if the cares of office had already begun to press heavily upon him.

Of his style of oratory I have next to speak. On this subject the writers of the day are loud in his praise —he is by them ranked with the most famous of the contemporaries of his youth, and is, as it were by one accord, placed at the head of all living orators. I must (not, I hope, in a spirit of presumptuous criticism), deny his claims to the character of an orator. It is

preposterous to say, that he is like Burke, Fox, or Sheridan; he is the direct opposite in every respect to any thing I have ever read, or heard, or can conceive of these three immortal senators. Will any man, save a sycophant, venture to assert, that in any one speech Earl Grey delivered in the whole course of his life, he displayed the sublime philosophy of Burke, or breathed thoughts comparable with his glorious conceptions? or can his stately language be assimilated with the burning words which issued from the rich and boundless imagination of his mighty rival? A finished and classical education, like that which Earl Grey received, may accomplish much for the public speaker; yet, after all, his brightest efforts are but darkness when matched against the light and splendour of heaven-born genius. With less justice still, could the stately Premier be likened to the bold and impetuous Fox, either as to language or appearance; about *him* there was nothing cold or studied; he was vigorous, impassioned, and often indiscreet; he expressed himself in hurried sentences, in involuntary exclamations, by vehement gestures, by sudden starts, and bursts of passion. "Everything (said a celebrated political writer) showed the agitation of his mind; his tongue faltered, his voice became almost suffocated, and his face was bathed in tears,

He was lost in the magnitude of his subject. He reeled and staggered under the load of feeling which oppressed him. He rolled like the sea, beaten by a tempest." We are told that Sheridan sat quaffing old port in Bellamy's, till he ascertained that "Charley's waistcoat was open," and then hastened to participate in the triumph of his friend. When was Earl Grey ever guilty of any of these glorious indiscretions? It would be undignified in him to evince deep emotion, or to suffer storms of passion, which should convulse vulgar souls only, to ruffle the serenity of his aristocratic temper. He was inferior to Fox in every attribute necessary to the attainment of oratorical renown, or the management of a popular assembly. It would be a mockery to class Earl Grey with the injured Sheridan—for Sheridan was a man of genius and a plebeian. I can laugh at those who presume to censure Sheridan, or detract from his fame; and I exult when reading the imperishable memorials he has left behind him, of humour, "gay as the fire-fly's light," of dazzling wit, of brilliant and fascinating eloquence. Posterity will do him justice, and his name will stand higher on the roll of fame, than that of the haughtiest aristocrat in the land. Earl Grey would perish sooner than protest, with uplifted crutches, as did the dying Chatham,

against the iniquity of injustice and oppression; but to his son, William Pitt, I should conceive the noble earl to bear a strong resemblance. William Pitt was an aristocrat by nature—like him, Lord Grey is a logician, addicted to the cold formalities of speech—and like him, stiff, unbending, bitter and relentless. Whether as a minister of state he will display the same strength of mind, the same confidence in his own resources, and the same tenacity of purpose, as Pitt, is yet to be proved. I heard his lordship speak for an hour in reply to Lord Wynford; he arrested my attention forcibly, so that I listened with a deep interest, while he spoke; he proved to a demonstration, that Lord Wynford's was a silly motion; he convinced my understanding; but such a speech as he then delivered, could not in the remotest degree affect the feelings, or touch the heart. Great political experience, extensive research, and long practice have made him an exact and argumentative speaker, but to the higher and nobler excellencies of the orator he never can aspire. I believe Earl Grey to be a man of frigid disposition, of severe correctness of mind; his very elegance, like that of the most finished works of the sculptor, has a certain coldness and hardness in it; while we admire his abilities, we cannot love the man. He seems to have as little of

softness in his nature as Brougham, but he is without Brougham's impetuosity of passion, which shows that he has a heart in his bosom, although its gentle emotions are sometimes overmastered by the huge tide of stronger and darker feelings that flow from the same source. The oratory of Earl Grey is clear, forcible, and elegant, but it produces neither enthusiasm nor tears; its fountains are the reason and the memory. His panegyrics are elaborate and precise, and commonly rounded with a classical quotation for the sake of effect; his philippics are carefully-wrought compositions of bitter and passionless severity; the arrows of his vengeance seem pointed with icicles. The intrepidity of Lord Grey is greatly mixed up with pride, and his temper is highly aristocratic; even when he is desirous to appear scornful, he seems to disdain the semblance of angry emotion; he knows that anger is a levelling and vulgar passion, while scorn is a feeling proper to a superior. Without fervour of feeling himself, he has little sympathy with that of others. If he could have appreciated the soul which animated Mr. Canning's speeches, and caused his sometimes hasty conduct, he could not have struck at him as he did, and lacerated the sensitive heart of an absent man with his cold, proud, and scornful reproaches. However strong the facts urged against Mr. Canning

may have been, Earl Grey cannot easily be forgiven for the motives which prompted him to make so unfeeling an attack upon one of the most accomplished gentlemen that ever lived. Would his lordship have ventured to say so much in the presence of his rival? could he have resisted him whom Brougham dreaded, or could he have withstood the matchless wit, the polished sarcasm, and enchanting eloquence of Mr. Canning? Despite the heartless irony of Lord Grey, the name of Canning is still worshipped all over the globe as the zealous friend of liberty, and when he fell, as Mackintosh beautifully expressed it, the lovers of despotism "raised a loud shout of joy at the downfall of their common enemy." The best of husbands and the best of sons, he was accompanied to the grave by the sighs and tears of his affectionate countrymen, who pardoned his failings from admiration of his unrivalled genius.

Earl Grey is proud of his order and rank, which, as much as his talents, have gained him the Premiership of England; but his exertions are as nothing, when compared with the efforts of a man, who, like Canning, without the adventitious aids of birth and fortune, forced his way to the highest station in the councils of the state, by the resistless influence of his commanding

talents. Lord Grey's efforts in the cause of reform and political liberty, however sincere they be, must come from the deductions of his reason: as to that generous enthusiasm for liberty, which springs from the heart and the imagination, I should as soon expect the statue of one of his ancestors to feel it as himself. Few men possibly would be better calculated for the post of prime minister in ordinary times, but I am apprehensive he does not feel enough for the people. The Duke did not; and *he*, perhaps, may split upon the same rock; he will give them Reform, but he is unmindful of their cries for bread.

His lordship is a friend to the diffusion of knowledge, and a patron of the London University. At the first distribution of prizes within the walls of that infant institution, Earl Grey presided, and awarded the honours with stately dignity and aristocratical composure; his exhortation to the prizemen to persevere in their studies with unabated ardour, was eloquent and impressive; and he concluded his address by paying a compliment to Mr. Brougham, not less beautiful than it was deserved.

NOTE BY EDITOR.

April, 1870.

AMONGST the prizemen in the Law Class to whom it was Earl Grey's duty to distribute the prizes at the London University on the occasion just referred to, and in the presence of Brougham and Denman, was the writer of this sketch. The gratifying event naturally attracted the student to the character and career of the noble Lord. He had then, recently, after occupying a seat on the opposition benches for over three-and-twenty years, attained the position of Prime Minister of England. The Duke of Wellington's administration retired from office in November, 1830. "It fell (says Sir A. Alison), because it had become unsuited to the altered circumstances of the people. It neither met their wishes nor provided for their necessities."

The history of Earl Grey subsequent to 1831, and until his defeat on the Irish Coercion Act, in 1834, when he retired into private life, is merely the history of England for the time being.

His career was that of a man of considerable talents,

combined with invincible courage and high moral dignity. The champion of a reform which has eventually proved democratic, yet in his hands, and in his conception of it, "it was the most aristocratic measure ever proposed to Parliament." The first *liberal* Cabinet assembled under his presidency, comprised thirteen members, eleven peers or sons of peers, and two Commoners.

The Irish administration of Earl Grey was remarkable, in having Lord Plunket for Lord Chancellor, and the late Lord Derby (then Mr. Stanley), for Chief Secretary.

Earl Grey died July, 1845.

MR. SERGEANT WILDE.

(LORD TRURO).

March, 1831.

THE circumstances under which this gentleman has risen to eminence are somewhat singular. For twelve years he followed the profession of an attorney, with assiduity and success; and having embraced the more dignified occupation of a barrister, with unheard-of rapidity acquired large practice and extensive reputation. A natural reflection suggests itself as to the remarkableness of Sergeant Wilde's advancement, commencing, as he did, the study of his profession at the wrong end; it may well be thought that the mind which is too early familiarised with technical questions, and practical details, is not the best qualified

to pursue legal studies scientifically. Undeniable as this may be, as a general proposition, yet experience disproves its universal application by many brilliant examples. Men's employments in life are often misconceived. Some descend to the grave endowed with extraordinary, although undeveloped, talents; the peculiar genius of others is not unfrequently perverted or misapplied; still, when finally directed in its proper channel, bursting from the trammels of a narrow education, it shines forth with unexampled splendour, seeming to have borrowed activity and lustre from unnatural subjection. How powerfully is this exemplified in the legal profession! Lord Hardwicke, as celebrated a judge as ever adorned the English bench, commenced his career the articled clerk to an attorney, without having received an university or learned education, for the want of which (so fatal to less gifted men) his uncommon powers of intellect and application made ample atonement; and it is a curious circumstance, that in the office of the attorneys to whom this great man was articled, there were, at the same time, Jocelyn, afterwards Lord Chancellor of Ireland, Parker, who became Chief Baron of the Exchequer, and Strange, who died Master of the Rolls; and in later times we

find Romilly and Redesdale, trained in the office of a six clerk, the former surpassing his rivals by the depth and soundness of his learning—enlightening senates by his eloquence and wisdom, and spurred into the noblest actions by a spirit of philanthropy as pure as it was unbounded; the latter, as an equity judge, pre-eminent for his wonderful research, the accuracy and impartiality of his judgment, the philosophical comprehensiveness of his decisions.

The subject of this sketch, although he commenced his career in somewhat a similar manner, is much inferior to these eminent individuals in natural endowments, as well as in moral worth. If the excellent intentions of Sir James Scarlett could have been fully carried into effect, such a man as Wilde would find it difficult to work his way into the profession, without submitting to the delightful drudgery of learning Greek grammar and exercises, and of enduring a searching examination from Messrs. Alderson and Richards; inasmuch as Sir James smitten with love of classical acquirements, prevailed on the benchers of the Inner Temple to enact, that all students who wished to enter that institution, should, if not provided with a university degree, be prepared to translate some portion of Greek, and moreover a

little Latin. The wisdom of this admirable arrangement becomes apparent when we consider, that the other Inns of Court refused to adopt so judicious a criterion whereby to test the intellectual qualifications and fitness of the young aspirants to forensic fame.* Sergeant Wilde was a member of a firm of solicitors who enjoyed large business. Their connections being extensive, and their influence considerable, Mr. Wilde deemed it advisable, consigning his clients to the watchful care of his excellent brother, to become a barrister, and attach himself to the Court of Common Pleas, which he accordingly did. He had unusual facilities for the immediate acquisition of business, having been well known to the attornies, and being of a vigorous and energetic character, was ready to push his interests on every opportunity. I have heard, and doubt not the truth of the report, that in the first year of his practice, Mr. Sergeant Wilde cleared £2,000. Persons unacquainted with the actual working of the system, may preach as they please concerning the certain success which awaits at the bar splendid talents and unwearied application. It is possible,

* The reader need scarcely be informed that a classical education is now required for admission, not only to the Bar, but to the profession of a solicitor.—(Ed.)

perhaps probable, that after the lapse of years, they may earn for their possessors emolument and distinction; and it is also possible they may for ever remain buried in obscurity, the mournful fate of not a few lawyers—which may operate as a useful warning to those highly gifted young men, who, filled with lofty hopes, rush into the profession of the law, conceiving they are about to reap at once the rich reward of their talents and research. If they be not disgusted at the success of men of doubtful merit, let them be slow in hope, and moderate in their expectations, convinced of this important truth, that if they had the learning of Coke, with the eloquence of Curran, they may be left behind in the race by individuals, who, without half the talent of Sergeant Wilde, have, like him, the cordial wishes and zealous support of that most influential body of gentlemen, the attorneys. Mr. Wilde soon became distinguished in the Common Pleas, in which court there is a ridiculous monopoly preserved in England, no less unfair to the young barrister, than injurious to the interests of the public. The assumption of the dignity of Sergeant is rather a dangerous step for some men, for it incapacitates them from acting as juniors; thenceforward they must appear as leaders only. As a working second counsel, Mr. Wilde

would have been regarded as an indifferent prompter, for he is as much inferior in practical information and knowledge of case-law to Chitty or Platt, the *old* established juniors, as he is above them in the showy qualifications of the advocate.

In term time, accordingly, when sober argument and temperate logic are required, together with learning and good taste, Mr. Sergeant Wilde displays no peculiar excellence; he is, on the contrary, too bold, loud, confident and impetuous, for quiet and sober discussion; and moreover, he is not deeply read in his profession, as many of the reported cases in Bingham amply testify. This is not in the least degree surprising; the wonder is, how an individual who never studied, or had time to study, having suddenly jumped into great business, has been able to keep his ground among his legal brethren, many of whom have devoted their lives to the attainment of professional knowledge. The Sergeant, therefore, deserves high praise—he gets through his arguments as well as others; and the stranger who may happen to stroll into Westminster Hall, during term, and turn into the Common Pleas, to get a peep at the celebrated Sergeant Wilde, must not be surprised at beholding a sturdy, loud-spoken

lawyer, whose voice and manner present but few indications of either the scholar or the high-bred gentleman.

The sittings at Nisi Prius are the scenes of his triumph. In this department of his professional practice, he is without a rival in the Common Pleas; he holds a brief in every cause, and from ten in the morning till seven in the evening, with untiring energy, dashes through assaults, *crim. cons.*, trespasses, libels, and seductions; he is alike at home in every case, and confident of success. It is in truth surprising to behold the indefatigable Sergeant state his case, examine, and cross-examine every witness—then speak to evidence; and the next moment commence the same task over again, and so throughout the entire day without cessation, preserving the same tone, voice, spirit and eloquence, down to the very last. Nothing can subdue or dismay this courageous advocate; he grapples so forcibly with every case, and tugs so hard against his opponent, that resistance becomes almost fruitless. Often, after watching the progress of a cause, have I sat till seven on a summer's evening to hear the Sergeant speak to evidence, and never had I reason to regret it—never have I been disappointed—on the contrary, my admiration for his masterly

abilities, has been, if possible, increased; surely, I would say, this man must be wearied with exertion! can he find strength for a fresh struggle? Soon, however, "like a strong man refreshed with sleep," would he spring up, to deal out his closing blow, seeming to have reserved all his vigour for the last exertion, that he might give it with signal effect. He assails his "learned friend," brother Taddy, perhaps, with merciless force, overwhelming him with a burst of the boldest eloquence; then he lays hold of the evidence for the defendant, and rends it to atoms, detecting little flaws, which had escaped every other eye—exaggerating the most natural slip made by a witness into a scandalous prevarication, and inveighing against monstrous inconsistencies, where there was scarcely a discrepancy. Having annihilated the "flimsy case" of his adversary, he next shows up his own evidence in the most favourable light—glosses over whatever cannot endure investigation—drives every lurking suspicion out of the mind of the jurors—takes their understandings by storm—compels them to believe that all is right and honest, then winds up with an impassioned peroration upon his client's wrongs and sufferings; in the course of which, the words "honour," "justice," "integrity of jurors," "rights of English-

men," predominate; and lastly, flinging at the jury, by this time well stirred up, two or three of the most striking facts of his case, he demands, in a tone of triumphant eloquence, their unhesitating verdict; which verdict, notwithstanding the sapient directions of the judge, the jury, with such a speech ringing in their ears, but too often return as the advocate bids them.

The Sergeant is then released—the business of the day is over, but the business of the night has yet to come; there are the same number of causes to be tried the next day—the same number of speeches to be made, and consequently the same number of briefs to be read. Accordingly, after swallowing a hasty meal, the learned Sergeant will be found at his chambers, King's Bench Walk, attending consultations, and wading through masses of papers, till an hour or two past midnight, after which he may divert himself till half-past nine in the morning, when he must be in Westminster Hall, to begin afresh his squabbles with "brothers Storks and Spankie." Frequently he spends an hour or two in chambers, before breakfast, by way of refreshment. Thus is he employed, till the causes at Nisi Prius, in London and Westminster, which generally average in number, five hundred, are disposed of,

and then he goes circuit for the remainder of the *vacation*.

It is pretty evident, to bear such never ending toil, his bodily strength must be commensurate with his mental energies ; and this is exactly the case ; the Sergeant is not one of your tall, pale, gentleman-like men, who behave with propriety, and say very nice things; no, he is compact, and well-built, scarcely above the middle size, and stands firmly on his legs; his bronzed countenance betokens professional impudence; his face has nothing remarkable in it, save the nose, which being cocked up at the end, well betokens the invulnerable effrontery of the proprietor. His "iron voice," is the weapon with which the doughty Sergeant overcomes every adversary; it is not harsh nor mellow—it is not soft, nor is it coarse; it is not grating, nor does it fall gently upon the ear—it never cracks, or even falters; but is as firm, loud, distinct, and bold, at midnight as at day-break. When fumbling at the huge curtain which impedes your entrance into the Common Pleas, the sonorous accents of the Sergeant salute your ear. And when, after the lapse of many hours, you depart, the same thundering noise, as it were, cannonades you through the gloomy hall. His stentorian voice, coupled with his inflexible energy,

renders him almost impregnable. His action corresponds with his delivery; it is unstudied, and appropriately impetuous; he does not hesitate at enforcing his argument with an occasional whack upon the desk, to the evident discomfort of poor brother Taddy. I firmly believe Wilde could talk down Daniel O'Connell, and beat down Mr. Wallace; and more need not be said, to convey a proper notion of his wonderful assurance.

In the merry days of the good Chief Justice Best, it was my constant practice to hurry to the Common Pleas, like a true Irishman, to enjoy a row. The ex-Chief Justice was a learned, honest judge, and a hasty, cranky, old gentleman; while he continued to preside in this court, he was teased by two eternal tormentors, the gout and Sergeant Wilde; and between bodily pain and mental irritation he was frequently worked into a frenzy of passion. All would be tranquil, till the Sergeant began to cross-examine, when "brother Cross," objecting to a question, and "brother Wilde" insisting upon its legality, the skirmish would begin. The Sergeant and the Judge would fight it out manfully, for "the Chief" had great pluck—all would speak together, and of course Wilde's voice would drown opposition; enraged with passion, "his Lord-

ship would demand a hearing," assert the dignity of the bench, and administer a stiff rebuke to brother Wilde, who, nevertheless, would still persist; and if he was defeated, he would have the last word at all events. Sometimes before the opinion of the court was delivered, the wily Sergeant would extort an answer to the question in dispute—then indeed, the choler of the Chief Justice would be raised—in the bitterness of his wrath he would exclaim, that justice had been violated, and deplore "he had not done his duty to this woman" (the witness). His Lordship was given to charging the jury against Wilde, and if he succeeded with the jury—for he made it quite a personal affair—he hobbled off the bench, chuckling with satisfaction that he had beaten his enemy and gained his verdict. Let me do justice to the merits of his Lordship—if he was a partisan, it was in the cause of justice, and there was nothing he so heartily detested as falsehood, trickery, or prevarication, which, whenever he could, he did not fail to punish. It was his favourite practice, when the jury had returned their verdict, virtually convicting a witness of perjury, to commit the witness to prison for *contempt of court*, accompanying the sentence with a suitable admonition, often not a little amusing.

One substantial cause of Sergeant Wilde's great success as an advocate in the Court of Common Pleas, is the weakness of his rivals—they may all of them be disposed of in a sentence. Brother Taddy is rather a sensible man, but cold and spiritless; Brother Cross is a *cross* fellow to come *across;* is stubborn and will not be put down, and his practice is limited; Brother Andrews is an exceedingly decent sort of person, and never contradicts his betters; Brother Spankie is but so, so, sometimes useful in the defence of a *crim. con.*; Brother Storks a short man, singularly devoid of genius, and provokingly loquacious; Brother Jones a plain man; Brother Bompas—nothing; Brother Stephen an exquisite scholar, who has written the best book ever published on the science of pleading, who seems to have but little practice because he deserves it most. Of the present Chief Justice, it may be said, he has a very lugubrious aspect; but deserves the highest praise, for he is a model of diligence, patience, impartiality, and learning.

When Scarlett is brought into the Common Pleas, then, indeed, Sergeant Wilde meets his match, and knows it; for he sits as far from Sir James as possible, and regards him with evident apprehension. The ease, ingenuity, and softness of Sir James put him out of his

way; he is well aware it is not "Brother Storks" he has to deal with, for Scarlett will hook an admission from him before he knows where he is. Blustering is of no avail; if Wilde shouts ever so loud, Sir James proceeds in his usual tranquil manner, satisfies the judge, wheedles the jury, leads the witness, gains the verdict, with the tranquillity of the artful advocate, and I may add, with the composure of a gentleman. No two persons in the world can be more diametrically opposed to each other, in every possible respect, than these distinguished advocates. And it is not a little entertaining, and perhaps instructive, to view in contrast and in conflict, Messrs. Wilde and Scarlett, who, by pursuing an exactly different method, have each arrived at the highest eminence in the most difficult of all professions. How various, and how opposite must be the feelings and emotions which affect the understandings of men, disturb and touch their hearts, when they can be worked upon for the accomplishment of the same ends, by the exertion of talents so widely dissimilar. Perhaps the extremes may not be so far removed, as we are taught by our classical recollections of the two philosophers to believe, that the ludicrous and the affecting are closely allied.

It may be collected from what I have written, that

in the oratory of Sergeant Wilde, there is little elegance or refinement, no very deep streams of thought, and little that is indicative of a polished taste—and such exactly is the case. Although a far more successful advocate than Brougham, and in the enjoyment of more beneficial practice, he has neither the deep philosophy, the profound and original conceptions, or the mighty grasp of intellect of that extraordinary man—nor can Sergeant Wilde lay claim to the mathematical precision of Mr. Pollock—the classical thoughts, the bright, although unequal images of Mr. Denman. His style of eloquence may be summed up in a single word, *force*—at nothing does he hesitate—he yields nothing—he concedes nothing—but rushes on with rapidity and strength, after the manner of a resistless torrent. He may not gratify the delicate taste of the fastidious scholar, but the mass of mankind are not fastidious scholars—and they can appreciate and understand him—not because he exalts them by his eloquence above the vulgar miseries of life, but because he frequently touches those chords which nature has implanted in the hearts of all, and in doing so, he appears to differ from his hearers in this alone, that he is more strongly affected by their common feelings and their common sympathies.

From the impression I have of his capabilities, I apprehend, that if he succeeds in his designs upon Newark, and becomes a senator, he will not shine conspicuously in the House of Commons. The persons who compose that house are a mob, it is true, but a mob of somewhat superior order, and moreover engaged in the consideration of topics foreign to the habits and employments of the mere Nisi Prius advocate. The failure of many eminent advocates testifies beyond controversy that to harangue mobs, make neat speeches, or wrangle about John Doe and Richard Roe—and to discuss with statesmanlike abilities questions of vast national importance, are vastly different things, requiring very different talents and attainments.

The habits of the Sergeant are not congenial with those of his professional brethren—he mixes not amongst them—not even on circuit does he dine with them—Mrs. Wilde (till very lately) in the excess of her conjugal affection, or apprehensive the Sergeant might go astray, in her coach and four conducted him round the circuit, and with her, as became a dutiful spouse, he passed every leisure moment. He has, they say, little relish for the innocent pleasures of life—literary conversation has no charms for him—and horrible to relate, he despises a cheerful glass, and devotes even

Saturday, a joyous day, among the generous, hospitable members of the English bar (and they are not a few) to references and consultations, supporting nature with a mutton chop, and a cup of muddy coffee in chambers.

A British judge should be a man of erect and independent mind, of singleness of purpose, and integrity of heart. Whether Sergeant Wilde will ever reach the Bench, cannot be predicted with certainty.

The vast acquirements of a Sir Matthew Hale, place him high on the splendid catalogue of English judges —history records his talents ; but it is his unshaken love of justice, his purity and fearless honesty which consecrate his name.

NOTE BY EDITOR.

April, 1870.

THE Sergeant Wilde of 1831, who, bred as an attorney, and commencing practice as a barrister, at the comparatively late age of thirty-five years, became successively, Lord Chief Justice of the Common Pleas, Lord Chancellor of England, a peer of the realm, and

cousin by marriage of her Most Gracious Majesty the Queen, was, and must have been, a remarkable man. Good fortune attended him at every step.

His father had been an humble officer of the Sheriffs of London, but being distinguished by industry, ability, and integrity, was introduced into a solicitor's office as an articled clerk, and finally attained to a successful and lucrative practice in the profession of solicitor. He has the singular honor to reckon among his immediate descendants two peers—the one—his second son, Thomas, the subject of the foregoing sketch, who became Lord Truro—and the other—his grandson—a son of his third son, Edward—lately styled Sir James Plaisted Wilde, and now Lord Penzance, the distintinguished Judge of the Divorce Court.

Sergeant Wilde was called to the English Bar in 1817. At the trial of Queen Caroline he served as junior to Brougham and Denman, a circumstance which did not tend to accelerate his promotion during the reign of Geo. IV. He received a silk gown in 1827.

He represented the Borough of Newark from 1835 to 1841, as colleague of the present Prime Minister, Mr. Gladstone. He was appointed Solicitor-General by Lord Melbourne in 1829, in succession to Sir R. M

Rolfe (afterwards Lord Cranworth), elevated to a seat on the bench as a Baron of the Exchequer. Early in 1841 he succeeded to the office of Attorney-General. At that time Lord Melbourne's ministry was in a critical state, and a story is told of Wilde, which, if true, is more to his credit than to the honor of the depositories of judicial patronage. It is said that Wilde, oppressed with the weight of an enormous business, had been advised to seek relaxation in the comparative ease and quiet of the bench—and had expressed his readiness to accept the place of a puisné judge, should it fall vacant. It so happened that soon afterwards a vacancy occurred, and the Chancellor (Lord Cottenham) being seriously ill, the Prime Minister was the person who, contrary to custom, was to be consulted on the matter. Wilde went to Lord Melbourne, who, before he had said a word on the subject, said:—"Of course you must have the judgeship—but it is fatal to the government, for nobody else can carry Newark—and whether Earle or Talfourd succeed you, we lose another seat—which, with a majority of four or five, that we have, is fatal." Whereupon the Attorney-General did not so much withdraw his application, as disclaim any such purpose or intention, in such a way that if the matter

were inquired into in Parliament, no blame might be attached to the government for making an appointment less satisfactory than it might have made. The party went out of office in the September following (1841), and did not return till 1846. Then, however, Wilde had his reward, for within a fortnight after his accession to the office of Attorney-General, he succeeded to the Chief-Justiceship of the Common Pleas, on the death of Sir Nicholas Tindal.

In four years afterwards, 1850, that distinguished equity judge, Lord Cottenham, resigned the Chancellorship. Lord John Russell felt such great difficulty in finding a suitable successor, that he resorted to the awkward expedient of putting the Great Seal in commission—and so it might have remained for a time, but Lord Brougham, following the impulse of his restless spirit, and possibly, in order to embarrass his quandam but ungrateful friends, the Whigs, assumed the functions of the Chancellor, and began to play all sorts of fantastic tricks in the House of Lords. Lord John Russell was then compelled to look out for a Lord Chancellor. He pressed the office on the Master of the Rolls, Lord Langdale, in vain, and next on Chief Justice Wilde, who, after much hesitation, and with some reluctance, accepted it. Lord Campbell, with

characteristic modesty, tells us that Lord John Russell knew well he need not make the offer to him (the Chief Justice of the Queen's Bench), who, since his promotion, had openly declared his resolution to refuse the Great Seal, if offered to him. This is somewhat hard to believe from Lord Campbell, who, fifteen years before (1835), while professedly advocating the claims of Lord Brougham to be restored to the Chancellorship by his friends, naively says, "*I put in my own claim;*" and from the same Lord Campbell, who in a few years after, clutched the Great Seal of Ireland with such eager avidity.

Lord Truro, taken from the Common Law Bar, and devoid of all experience in equity jurisprudence, like Lord Erskine, Lord Brougham, Lord Lyndhurst, and Lord Campbell, nevertheless acquitted himself in the office of Lord Chancellor, creditably and without reproach. He brought to the discharge of his duties extraordinary patience and diligence, and great natural acuteness and impartiality. His greatest fault was that he overdid his work, from habits acquired perhaps when practising as a solicitor, and he dwelt too elaborately on all the points of a case, without due regard to their relative value and importance.

Lord Truro retired from the Chancellorship in 1852,

on the accession of Lord Derby's first administration, and he never returned to office. It is said he was not sufficiently zealous in the character of a Law Reformer to attract the notice of the coalition Cabinet of Lord Aberdeen, and that consequently the more facile Baron Rolfe (afterwards Lord Cranworth), was preferred, and transformed from a distinguished Common Law Judge, into a passable Lord Chancellor. Lord Truro was twice married. His second wife (1845) was Mdlle. Augusta Emma D'Este, the daughter of his Royal Highness the Duke of Sussex. He died 11th November, 1855, aged 73 years.

LORD PLUNKET.

March, 1831.

THE intemperate abuse of passionate or prejudiced men, cannot prevent generous minds from rejoicing at the exaltation of transcendent talent. Despite party feeling, we share the triumph of the man of genius—the more especially if sprung from the people. We think of the early difficulties which he surmounts by his dauntless energy—of his hardships, hopes, and fears, while a friendless student, which none, save those who have felt them, can properly conceive. We observe him emerging from obscurity, forcing his way to fame and honour, subduing opposition, outstripping every rival; and we are gladdened in heart at the cheering spectacle of his final and complete success. We should exult the more when we consider how different has been the fate of many highly gifted individuals—

how many men, in every profession, of undoubted talents and profound erudition, after wasting their health by the intensity of their application, have perished broken-hearted victims in the pursuit of fame—how many have been crushed by poverty, or withered by neglect. With regard to the promotion of Lord Plunket, the hottest partizans might for once pay homage to the excellence of genius, recollecting that the judicial bench has been too frequently the reward of apostasy and dulness.

Lord Plunket is the son of a Presbyterian minister, who died, leaving his family in somewhat straitened circumstances: he was enabled, however, to pursue his collegiate studies, as the preparatory step to the attainment of a profession. The fact of his lordship having been brought up among Dissenters, may have had some influence as to the formation of his character. Whatever may be the peculiarities of Dissenters, it must be admitted, that their tenets and principles encourage boldness of thought, and freedom of discussion, promptness to express their opinions openly, and maintain them resolutely, to respect the sacred rights of conscience, and to worship liberty as a goddess deserving constant devotion. The Presbyterians have evinced spirit, intelligence, and energy; they

aided in raising Ireland from the degradation into which she had fallen, and in achieving her independence; and they were proud of the great work which they had helped to accomplish. Bred up among such a class, young Plunket must have imbibed liberal opinions—his enemies assert they bordered upon republicanism; but prejudiced critics cannot discriminate between a virtuous enthusiasm for liberty, and a wild revolutionary spirit. In our University he became a member of the Historical Society, in its best days; a society which is entitled to the lofty praise of having been a noble training school for the cultivation of the highest faculty the bounty of heaven has bestowed on man. He soon attained eminence as a speaker; his eloquence was bold and rapid, nervous and impressive, as it continues at the present day, save that it is matured by wisdom, and tempered by experience. He quoted no verses; delivered no poor conceptions wrapt up in pompous words; he avoided rant and declamation; and, speaking logically and tersely, delighted his audience by the vigour of his eloquence, no less than he convinced their judgment by the soundness of his reasonings. When we consider what a mighty ally oratory is to him who aspires to public or professional distinction, when from the events every day passing around

us, we behold the prodigious influence it exercises over the passions and conduct of men, according as its tendency is good or evil, we must be struck with astonishment that the study of eloquence should be, at the present day, so sternly forbidden in our universities, as though it were a black art. May we not fairly hope, that if ever the political excitement which now rages through the land, shall abate, the liberality of the board may tempt them to re-establish the Historical Society, the memory of which, even now, sheds a lustre on our university and our country.* Lord Plunket's university character travelled before him to the bar, and prepared his friends for his early and signal success. When keeping terms in London, he was an intense student; and never man devoted himself more eagerly to the mastery of the recondite learning of his profession. In his person was strikingly disproved, the silly, but too prevalent opinion, that unabated perseverance is incompatible with splendid genius. One of his earliest friends was Archbishop Magee, with whose capacity and learning the public have been long familiar: the intercourse and

* Written in 1831, when the Society was obliged to hold its meetings outside the walls of Trinity College. In 1843, it was admitted within them, the eloquent Bishop of Peterborough, being auditor for the year—(Ed.)

intimacy of such men must have been equally beneficial to both—the literary triumphs of the one, must have stimulated the other, by a generous rivalry, to perseverance. Their political disagreement in after life diminished for a time, it was said, the friendship which had been formed and cemented in their youth, when their opinions could scarcely have been discordant. The charge of inconsistency brought against either, might be obviated by considering, that the question on which they differed most widely, had not *then* engrossed the attention of the public. But Lord Plunket had another and a dearer friend in Mr. Burrowes: their attachment has been deep and lasting—alike honourable to both—the growth of mutual esteem and reciprocal affection. And no one circumstance reflects more honour upon Lord Plunket's character as a man, than the unalterable regard with which he has repaid the unshaken friendship of Mr. Burrowes—a friendship of which the highest individual in the land might feel justly proud.

The success of Lord Plunket at the bar was prompt and decisive, and that at a time when eminence was not easy of attainment—when every inch of the ground was disputed by numerous rivals of extraordinary merit. He had to contend against the sweet-tongued and persuasive Bushe, whose seductive oratory en-

chanted every ear—the sound learning and strict logic of Saurin—the wisdom and experience of Burston—the power and simplicity of Burrowes—the irresistible wit, the deep and touching pathos of Curran. I am tempted to pause, and ask where are we to look for the worthy successors of such men? The oratory of the Irish Bar has been sharply criticised: it will now escape observation—the genius of eloquence has nearly fled, it is to be hoped not to make way for declamatory ebullitions, nerveless insipidity, or prosing tameness.

Lord Plunket was engaged in the celebrated case of the petition to the Irish House of Commons, against the return of Hutchinson for the University of Dublin. His printed speech on that memorable occasion is excellent, of course; but certainly not superior to that delivered by his friend, Mr. Burrowes. They did all that men could do, and failed; for what can even the sublimest eloquence achieve, when matched against systematised corruption? His practice at this time was extensive, and he possessed every requisite, as a lawyer, to preserve and extend it; while his acknowledged superiority, as a public speaker, marked him out as likely to be a powerful ally to any political party to which he might become attached. He was

introduced, accordingly, into the Irish Parliament, in the days of its decline, and soon became one of the conspicuous public characters of the time. The speeches delivered by his lordship in the Irish House of Commons are deeply interesting. There is a recklessness about them, which seizes the attention, and compels you to believe in the sincerity of the man who could employ such daring language. He thundered forth his invectives with the most unsparing fury, and lashed his opponents with merciless and incessant sarcasms: ridicule he disdained—scorn, hatred, and defiance, were the weapons of his wrath.

In the debates upon the Union, his passion was ungovernable, his indignation boundless; he vented his rage upon the devoted head of Castlereagh with relentless bitterness. The few sentences in which he drew a comparison between Mr. Pitt and Lord Castlereagh, are unequalled for the mingled expression of scorn and contempt. "The example of the Prime Minister of England, inimitable in its vices, may deceive the noble lord. The Minister of England has his faults: he abandoned, in his latter years, the principles of reform; by professing which, he had obtained the early confidence of the people of England; and in the whole of his political conduct, he has shown him-

self haughty and untractable: but it must be admitted, that he has shown himself by nature endowed with a towering and transcendent intellect, and that the vastness of his moral resources keeps pace with the magnificence and unboundedness of his projects. I thank God that it is much more easy for him to transfer his apostasy and his insolence, than his comprehension and sagacity; and I feel the safety of my country in the wretched feebleness of her enemy. I cannot fear that the constitution, which has been formed by the wisdom of sages, and cemented by the blood of patriots and of heroes, is to be smitten to its centre by such a green and limber twig as this." Of quotations, he has ever been most sparing, especially of poetical *morceaux*, which are the usual embellishments of inferior orators; but whenever he did adopt them, they were singularly felicitous and pointed in their application. The following passage from a speech upon the Union, furnishes a striking exemplification of this: "The independence of a nation, I must own, does not appear to me to be exactly that kind of bagatelle which is to be offered by way of compliment, either to the youth of the noble lord, who honours us by his presence in this house, or to the old age of the noble Marquis, who occasionally sheds his setting lustre over the other; to

the first I am disposed to say, in the words of Waller—

'I pray thee, gentle boy,
Press me no more for that slight toy.'

And to the latter, I might apply the language of Lady Constance: 'That's a good child—go to its grandam—give grandam kingdom, and its grandam will give it a plum, a cherry, and a fig—there's a good grandam.' I hope, therefore, sir, I shall not be thought impolite, if I decline the offer of the constitution of Ireland, either as a garland to adorn the youthful brow of the Secretary, or to be suspended over the pillow of the viceroy." A classical quotation of his lordship's in the Imperial Parliament, was remarkable for strength and application; it was that wherein he compared the fury of the excluded Catholics to the

'Iræque leonum,
Vincla recusantûm.'

It must be admitted, that however the vehement adjurations and passionate appeals in his Union speeches may have been warranted by the excitement of the moment, yet, when perused calmly, at this distance of time, they appear to border upon the extravagant; as where he exclaims, "For my own part, I will resist it to the last gasp of my existence, and with the last drop of my blood; and when *I feel the hour of my dissolu-*

tion approaching, I will, like the father of Hannibal, take my children to the altar, and swear them to eternal hostility against the invaders of their country's freedom." His lordship has, on this family subject, changed his mind wonderfully, and for the better.

This is not the fit place to discuss the policy or impolicy of the Union; but I may observe, that I can perfectly comprehend how a man might sincerely resist the enactment of that measure, and as sincerely and consistently resist its repeal. A rooted conviction of the irrevocable nature of that measure, may have naturally increased the violence of Plunket's opposition to it; but that because he resisted the measure of the Union, thirty years ago, he should now, under different circumstances, and at a different time, struggle for a dismemberment of the empire, does not appear to me to be either logical or rational.

That he will in Parliament oppose to the uttermost the Repeal of the Union, his connection with the present ministry fully testifies; that he can do so without being obnoxious to the charge of inconsistency, is obvious to every candid mind. His speeches in the Irish House of Commons, although differing in style, were scarcely inferior to any delivered by even the best of his contemporaries: they read better than many of

Grattan's; for the logic is more easy, the language more clear and unembarrassed, the metaphors not so far-fetched, and the style less elaborate and antithetical; his invective, although quite as caustic and severe, was not so bitter and personal; he eclipsed Curran in the character of a senator; but before a jury, he was inferior to that incomparable advocate. Although his delivery was not so graceful, or his words so flowing as those of Bushe, yet his thoughts were more robust, his action more unstudied and impressive.

He entered the Imperial Parliament, as member for the University of Dublin; nor could that learned corporation have selected a representative better qualified to uphold their dignity and the honour of the country. How unlike the fate of Flood was that of Plunket, in the English House of Commons; the first, with every attribute of greatness failed, the triumph of the latter was complete. His sound judgment soon taught him to adapt his style to the serious character of his hearers. Hence it is, that although a sarcastic vein prevails in many of his speeches delivered in St. Stephen's, yet the total absence of that haughty and contemptuous irony, which pervades his earlier efforts, is easily perceivable. The English members, on the other hand, soon saw the sort of man they had to deal with—

they admired and respected him; and the character which he once gained amongst them, he never subsequently lost. He was not a talkative member, nor did he delight in making vapid observations on the presentation of petitions; he held himself in reserve for the proper opportunity, and then showed that he knew how to use it.

The Catholic question was the theme on which his abilities shone forth most conspicuously; his name became identified with that great measure, and he was ever regarded as its best and ablest advocate: he was master of the subject in its principles and details, for he had considered it long and attentively: he was likewise intimately acquainted with the condition of the country which it more immediately concerned; his speeches, consequently, teemed with cogent arguments and valuable information on the matter. His admirers say, that his speech delivered in 1813, in bringing forward the Catholic question, was his most brilliant and triumphant effort in the British senate; but I conceive that all his speeches on this subject are equally excellent and convincing: they are even finished compositions—every sentence is perfect and compact; and yet, the speaker seems resolved not to detain you a moment longer than is necessary—his mind hurries on to the

conclusion. How forcible are his illustrations: "The time to have paused was before we have heaved from those sons of earth, the mountains which the wisdom or the terrors of our ancestors had heaped upon them; but we have raised them up, and placed them erect—are we prepared to hurl them down, and bury them again?" It is admitted, that in the debate on this question, he excelled every other speaker: Canning joked sometimes, Castlereagh blundered, Brougham got into a passion, but Plunket, equally eloquent, was more guarded and convincing. All was respect and attention while he spoke; no man was listened to with such marked deference, nor were there heard cheers more loud and triumphant than those which accompanied his forcible and conclusive sentences. The most remarkable of his speeches upon other subjects was that spoken on the Manchester riots: his power was such, that by turning round to assist the government and assault the radical faction, he may be said to have saved the country from ruin. At that unhappy time, the discontent of the people was so fierce and violent, the schemes of sedition so numerous and mischievous, that the government of the country might be said to be actually reeling from its position. Plunket lent his aid to prop it up, and by what was considered an astonish-

ing effort of argument and eloquence, gave to the frightened House of Commons the tone and the temper which the time required: he spoke of the radicals of the day as "incendiaries, with their levers placed under the great pillars of social order, and heaving the constitution from its foundation." And yet, distinguished critics have termed this speech feeble and degenerate, compared with those inimitable specimens of masculine, chaste, epigrammatic, vehement eloquence, which the orations on the Catholic question displayed. He has been accused of resting too much "*upon the general notoriety of facts*" in the debate on the Manchester riots; the *Edinburgh Review* observing it was just such a speech as any lawyer might make up from his brief. After this criticism from the *Edinburgh*, it is amusing to turn to the *Quarterly*—what does it say of Plunket and his speech? "As might have been expected from the known character of Mr. Plunket's public speaking, his speech is eminent for the unlaboured clearness and compactness of its reasoning, for the noble simplicity of its style and manner, and for the soundness and devotion of its political views." The reviewer then descants upon Irish eloquence, and bestowing upon it a just and splendid encomium, proceeds to observe, that Plunket's style *was* "*all over English.*" A most admired

passage may not be entirely inapplicable to the present times: "To whom are these calamities to be attributed? Is it not to those who, actuated by selfish motives of ambition (no, I will not say ambition, I will not squander a word often applied to nobler aspirations, to such base designs)—is it not to those who seek mischief for mischief's sake, who would let loose the whirlwind, though with the conscious incapacity to direct it? who would lay the fabric of social order in ruin, not so much in the hope of rising upon that ruin, as for the satisfaction of contemplating the havoc and desolation they had made?" It is most strange to find two such eminent publications differing upon the merits of a speech, even as a composition. I entirely subscribe to the criticism of the Tory journal, although I do not assent to the fairness of the observation, that his style is all over English.

Lord Plunket preserved his reputation in the senate by speaking but seldom, and speaking well: but still it must be admitted, senators relish variety of attainments in public men; and Brougham, who displayed such ability and information in the discussion of a variety of subjects discussed in Parliament, deserves far higher praise than the subject of this sketch, whose exertions were confined within a comparatively narrow sphere.

With Mr. Plunket's powerful forensic efforts, every person of taste must be intimately acquainted. Considering his talents as an advocate, it appears somewhat strange, in looking over the mournful catalogue of Irish state trials, not to find his name appearing as counsel for the accused. He seems to have stood aloof, to have given way to Curran, his less solid, but more brilliant contemporary; the ardent character of the latter eminent person tempted him to mingle more with the people; he was one of themselves, and it was natural they should fly to him for help, when the strong arm of power was raised against them.

For nearly twenty years Mr. Plunket practised only in Chancery, for the business of which court his wonderful sagacity peculiarly fitted him; he was not remarkable for his knowledge of case law, nor did he bolster up his arguments with decisions in point; frequently, however, his purpose appeared to have been rather to puzzle the judge than to establish his client's case. It has been said that Plunket ought always to have been counsel for the defendant; for out of the plaintiff's case he was able to extract arguments to defeat him; and I have heard, but cannot vouch for the fact, although it seems not improbable, that when a cause had been called on, in which he hardly looked

at his brief, he would say, "Well, no matter; Saurin knows the case, and will say enough for himself and for my purpose too;" thus he always cut a staff at his adversary's hedge to beat him with. Two memorable jury cases prove in a signal manner the depth of his understanding and the originality of his eloquence. The first—the case of the prerogative information against the Chief Baron, in 1817, is still fresh in the recollection of the profession and the public; such a blaze of eloquence, on so dry a subject, never before astonished and delighted an Irish audience. Plunket's speech was not decked with ornament, but replete with antiquarian and recondite learning; sometimes amidst the profoundest train of reasoning, a sarcastic reflection would escape him. His attack upon Mr. Saurin was intemperate, but useful, as it afforded an opportunity to the present Chief Justice* for the delivery of one of the most beautiful speeches, in reply, ever made in a court of justice. The second trial to which I allude, is that of Handwich and others, for a conspiracy to create a riot, in 1823. The statement of the then Attorney-General, Plunket, was classical, energetic, and luminous; many parts, on a calm perusal, resemble a beautiful historical composition, as, for example, the following character of William the Third: "Perhaps, my lords,

* The late Chief Justice Bushe, then Solicitor-General.

there is not to be found in the annals of history, a character more truly great than that of William the Third. Perhaps no person has ever appeared on the theatre of the world, who has conferred more essential or more lasting benefits on mankind—in these countries certainly none. When I look at the abstract merits of his character, and contemplate him with admiration and reverence—lord of a petty principality—destitute of all resources but those with which nature had endowed him—regarded with jealousy and envy by those whose battles he fought, thwarted in all his counsels, embarrassed in all his movements, deserted in his most critical enterprises, he continued to mould all those discordant materials, to govern all these warring interests; and merely by the force of his genius, the ascendancy of his integrity, and the immovable firmness and constancy of his nature, to combine them into an indissoluble alliance against the schemes of despotism and universal domination of the most powerful monarch in Europe, seconded by the ablest generals, at the head of the bravest and best disciplined armies in the world, and wielding, without check or control, the unlimited resources of his empire. He was not a consummate general; military men will point out his errors in that respect; fortune did not favour him, save by throwing

the lustre of adversity over all his victories. He sustained defeat after defeat, but always rose *adversis rerum immersabilis undis*. Looking merely at his shining qualities and achievements, I admire him as I do a Scipio, a Regulus, a Fabius, a model of tranquil courage, undeviating probity, and armed with a resoluteness and constancy in the cause of truth and freedom, which rendered him superior to the accidents that control the fate of ordinary men." The excellence of this glowing description will induce the reader to pardon the length of the quotation.

Enough has been said of his forensic eloquence, to show that it was of matchless force, and sufficiently elevated to raise the imagination to the level of great and vigorous conceptions. Has not such a man as this a right to the highest honours in his profession? And must not every one who admits and admires the supremacy of genius, feel indignant that reproaches should be hurled against a ministry for elevating to the highest station in the land one whose talents are so undoubted and so splendid. He possesses the rare union of high and commanding eloquence, with the most acute and vigorous reasoning powers; his natural logic exceeds that of any living public man. It is astonishing with what might he grasps the argument of an adversary;

and while he crushes it to pieces, extracts from it the matter which is to serve his purpose. But there is no trickery nor finesse in this; he is not only a subtle, but a bold logician; he does not nibble away a point from his antagonist, but tears it from him by main force; yet always so as to appear to have reason and fairness on his side. He is collected in debate, but never cold; he is seldom fiery, but then he is never frigid; he is at once skilful and strong; and when his adversary is thrown, we scarcely know whether it is most by adroitness or by force. And yet, after all, I cannot help thinking, that if he had accepted the office of Master of the Rolls, and settled in England, he would have injured his fame, and lost a portion of that high renown which he now happily enjoys. In parliament, he would have always maintained his ground; he might have made a good equity judge; but the bar over whom he was to preside, had been accustomed to the immense erudition of Lord Eldon, to the profound wisdom and luminous decisions of Sir William Grant, to either of whom, as equity judges, it may not be deemed presumptuous to assert, Lord Plunket would have been decidedly inferior. Mackintosh must have ranked above him as a philosopher and an author; for Plunket has given to the world no proofs that he is either; while Brougham,

his equal in the senate, would have eclipsed him as an universal scholar, as an author, as the friend of science, the encourager of learning, the patron of many good and useful works. Lord Plunket's memory and talents cannot speedily be forgotten; but these illustrious persons, owing, perhaps, to their favorable position and larger experience, will be considered to have more substantial claims upon the admiration of mankind, and their glory will assuredly be more solid and enduring.

NOTE BY EDITOR.

April, 1870.

Lord Plunket's story to the commencement of his Chancellorship has been told with cordial appreciation and marked admiration by the writer of the foregoing memoir. I shall only add some particulars respecting his judicial career and its close.

The writer of the sketch, a young, ardent, Irish student, was fired with generous enthusiasm when he beheld Lord Plunket, after such a distinguished course in Parliament—after the toil of over forty years at the bar, and at the ripe age of 66—at length obtaining the tardy requital of his services.

More than 30 years before, in company with Grattan

Flood, Curran, and Bushe, he had shed a lustre over the expiring days of the Irish Parliament. Transplanted to the British House of Commons, he attained rank as a parliamentary orator subordinate to none. When he entered it, the great voices of Pitt and Fox were hushed. The celebrities of the house had been mostly Irishmen—Burke, Sheridan, Grattan, Barre. Plunket appeared, and spoke in a style altogether different—correct, logical, and severe—in language terse and chaste—with a delivery energetic, but sober and exact, and with an eloquence rising with the occasion to almost the loftiest heights. For over 20 years he had been the consistent champion of the "Catholic claims." He was, in the opinion of Sir Robert Peel, the most powerful and the most able advocate the Catholics ever had. At the bar his career had been as rapid as it was brilliant. In ten years, and at the comparatively early age of 33, he attained rank as King's Counsel. When 39 he was Solicitor-General; at 41 he was Attorney-General; but before he reached the bench the long period of 21 years had been suffered to elapse.

Mr. Plunket's promotion had been deferred to subserve the exigencies of party. He was an adherent of the Grenville Whigs. When, therefore, Mr. Canning

became Prime Minister, and formed his cabinet chiefly from amongst the Grenville Whigs, Mr. Plunket naturally expected to succeed to the highest office open to his professional ambition, and the one to which his practice and experience seemed to have specially fitted him—the Irish Chancellorship. But the anti-Catholic prejudices of King George IV. were so strong, that he could not be got to sanction the appointment of the great Catholic champion; and the old Chancellor of the Tories, Lord Manners, was requested to continue to hold the Great Seal for some time longer, to afford opportunity for his Majesty to make an arrangement for placing it in proper hands.* Lord Manners, accordingly, held the Great Seal of Ireland until the November following, and, after an unsuccessful endeavour on his part to have it transferred to Mr. Saurin, it was finally committed to the Vice-Chancellor of England, Sir Anthony Hart.

Canning, sensible of the vast obligations under which the party stood to Mr. Plunket, endeavoured to repair the first injustice done to him by placing him in the next best office at his disposal—that of Master of the Rolls of England, about to be vacated by Sir John S.

* See Letter from Lord Wellesley to Mr. Plunket, dated 19th April, 1827. "Life of Lord Plunket," by Hon. D. Plunket, vol. 2, p. 245.

Copley's promotion to the English Chancellorship. Now, Sir John Copley (Lord Lyndhurst) had seldom or never practiced in the Court of Chancery, and yet had discharged the duties of Master of the Rolls with efficiency and without reproach: whereas Mr. Plunket had served a long apprenticeship in the court. He was a leader under Lord Redesdale, and had continued such for nearly 25 years; when his competitors were Saurin, Burston, Burton, Serjeant Ball, and Pennefather, and his juniors, Lefroy, Blackburne, Serjeant Warren, and many other eminent Chancery lawyers. It was, therefore, impossible for a moment to suppose that Mr. Plunket was unfit for or unequal to the duties of the office. "Plunket was actually appointed; but, after a few days of office, resigned;" as he himself expressed it—"not being able to reconcile himself to act against the feeling of a great number of the profession, opposed to the appointment of an Irishman, or, rather, Irish barrister.* In fact, the English Chancery Bar rebelled against having a stranger intruded into their sanctuary. He was thus a second time thrust aside, on this occasion, to make matters pleasant to the English Bar.

Sir Anthony Hart, as we have said, was appointed to

* Life of Lord Plunket, vol. ii., p. 246.

the Irish Chancellorship; an excellent lawyer and impartial judge, but unknown beyond the limits of the Court of Chancery; undistinguished and colourless as a politician. Far be it from me to say that this was to his disadvantage as a judge; possibly the reverse: and if the political and judicial functions of the Chancellorship could have been dissociated, few appointments could have been better. But, as matters stood, an English Vice-Chancellor was entrusted with the important political functions of the Great Seal of Ireland, made the constitutional adviser of the Viceroy in his government of a disturbed country, and the supervisor of its magistracy; and it is not to be wondered at that Sir Anthony Hart proved not particularly qualified for the duties thus imposed upon him; while Plunket, the ablest lawyer and politician of his country, a man wise and sagacious in council, powerful and commanding in debate, and of the largest political experience, was thrust into the Chief Justiceship of the Common Pleas, to fill the place of the facetious Lord Norbury.

I cannot find that the Irish Bar imitated the spirit of their English brethren, expressed dissatisfaction, or evinced discontent, although their foremost member had been thus recently treated with marked discourtesy, if not injustice. They accepted an English

lawyer for their Chancellor as a Roman province would receive a pro-Consul at the hands of its haughty mistress.

Lord Plunket remained at the Common Pleas until the close of the year 1830, when the Duke of Wellington's administration fell before the storm raised by the Reform agitation. He then became Lord Chancellor of Ireland (23rd December, 1830).* From 1831 to 1841 (excepting the short interval from 29th December, 1834, to 23rd April, 1835, of Sir Robert Peel's first Conservative administration) he continued Lord Chancellor, and the chief adviser of the successive Viceroys, Lords Anglesea, Wellesley, Normanby, and Ebrington.

The close of Lord Plunket's judicial career has been more than once the subject of narrative. Lord Brougham has furnished a Preface to the "Life of Lord Plunket," by his grandson, in which he describes this transaction as "the most gross and unjustifiable act ever done by party; combining violence and ingratitude with fraud."

In a legal publication of the year 1855† there is a

* In Mr. Plunket's Biography, vol. ii., p. 322, the date is given as 30th January, 1830, which is, doubtless, a misprint.

† Legal Review, vol. xxii., p. 233.

fuller narrative of this particular crisis, which is highly interesting in itself, and bears indubitable marks of the peculiar style of the noble writer of the Preface. Lord Brougham had a habit of repeating himself; and as one instance I may notice a correction in the paper to which I allude, of Mr. William Henry Curran's rendering of Lord Plunket's celebrated figure of Time, which, as given by Mr. Curran, the writer deems to be imperfect, inasmuch as it attributes everything to the natural operations of time, leaving out what he considers the fundamental part of the figure; that he has a scythe, naturally to destroy; but that the law-giver *places* an hour-glass in the other hand to save. The metaphor is repeated in Lord Brougham's Preface, and again in his Historical Sketches,* with the emendation suggested in the earlier paper; and the law-giver is brought forward with formal accuracy, for the purpose of placing in the hand of Time the appropriate hour-glass. It appears to me that Lord Brougham and Mr. Curran have rather spoiled the simplicity and grace of the metaphor or picture produced by Lord Plunket's felicitous adaptation of an image familiar to all men's minds, to every child who has read Æsop's Fables, of Time, as an old man, with a scythe in one hand and an hour-glass in

* Sketch of Chief Justice Bushe, vol. ii., p. 198, 2nd series.

the other. Plunket was a master of rhetoric, and the peculiar character of his speaking was, that he never used an unnecessary word; and he would not have said anything so obvious and matter-of-fact as that Time mows down the muniments of our possessions *with a scythe*, lest his hearers should imagine it was with a reaping-hook. Far less would he have encumbered his metaphor with the clumsy part of the legislator so officiously introduced. He would have left these minor accessories to the imagination of his audience. Mr. James W. Lendrick, Q. C., one of the counsel in the case in which Plunket used the metaphor, has given an authentic version of this much-lauded passage.* It was on the trial of a *quare impedit* (not in a cause in Chancery, as Lord Brougham has it) that, in the course of his address to the jury, when certain deeds could not be produced to sustain the title, as alleged, and as it has been enjoyed, the advocate was obliged to resort to the aid of prescription:—"Time," he said, "with the one hand mows down the muniments of our title; with the other he metes out portions of duration which render these muniments no longer necessary." The scythe, the hour-glass, and the

* See Drury's Reports, temp., Lord Chancellor Napier, 641, Note *a*.

legislator are interpolations of Mr. Curran and Lord Brougham.

The paper which I venture to connect with the name of Lord Brougham purports to be a review of Mr. Curran's Sketches of the Irish Bar, republished in 1855; but it is entirely occupied with Mr. Curran's able sketch of Plunket, which left off with the year 1822. It speaks of Plunket's great parliamentary and forensic reputation, and proceeds to refute an assertion sometimes made, that the great success of Lord Plunket's eloquence was confined to Irish questions in the House of Commons. It alludes, in terms almost identical with those employed in the Preface, to the remarkable speech of 1819, on the conduct of Mr. Wyndham Quinn, charged with corrupt practices, in which Plunket followed Sir Robert Peel on the same side, the defence; and although he had not had the benefit of being present when the evidence was given, surpassed him with extraordinary effect. Peel, who had taken an active part in Mr. Quin's favour, made a speech in mitigation, and never thought of defence:—"He had gone over the whole field, as it were, but put up none of the game. He never had dreamt that there were the materials of a case in his friend's behalf. Mr. Plunket, who had only read the

evidence, at once saw those materials, and used them most powerfully. His speech was masterly, and left his hearers in astonishment at the difference of the two advocates."

Plunket's famous speech on the Marriage Law in 1822 may be cited as another instance of his success on a subject wholly removed from Irish controversy. However, it must be admitted that, notwithstanding his great powers and capacity, he seldom troubled himself with such subjects, and was by no means diligent in preparing himself for the discharge of the everyday duties of a parliamentary representative, and it was but occasionally that he took part in the great questions of the day, imperial, international, or cosmopolitan, as they happened to arise.

In proof that Plunket's oratorical triumphs were not confined to the House of Commons, the debate on the Reform Bill of 1831 may be mentioned, in which he bore a distinguished part. His speech upon this occasion was one of his happiest efforts, and put to flight the notions which some had been found to entertain—that the gift of eloquence had departed from him.

Lord Plunket's eloquence was, undoubtedly, his best title to fame. In that kind of eloquence, which seeks to convince by close reasoning, clear exposition, apt

illustration, and persuasive earnestness, he, perhaps, has never been surpassed; although in that still higher degree of eloquence, by which the human mind is not merely convinced, but aroused, agitated, and subdued, he was wanting; his speeches are altogether void of that passionate warmth and enthusiasm which kindles the emotions, stirs up the latent forces of our nature, and leads captive the will to the purpose of the orator. He was a master in reasoning, and, perhaps, the excessive sobriety and coolness of his judgment, and the caustic, rather than genial, character of his wit, precluded him from ever reaching the highest range of oratorical excellence.

As the manner of Lord Plunket's retirement from the Irish Chancellorship, and the pretext under which it was accomplished, are so well known, it is needless to say anything more about them here, but that his resignation was sudden and unexpected.

On the 17th of June, 1841, Sir John Campbell's address to the electors of Edinburgh, soliciting re-election, had appeared in the public papers. On that same day Lord Plunket's resignation was procured by the Lord Lieutenant of Ireland, Lord Ebrington, and forwarded to Lord Melbourne; and received, probably, on the 18th; and on the 22nd the *London Gazette* con-

tained the announcement of the elevation to the peerage of John, Baron Campbell, consequent on Lord Ebrington's success.

Lord Campbell's account of his appointment is remarkably meagre and reserved. He says: "I had been sent to Ireland to succeed Lord Plunket as Chancellor there."* It is alleged that he was not in any way privy to or cognisant of the negociations entered into for his benefit. However this may be, the announcement of the appointment evoked an universal storm of indignation. The press, both in England and in Ireland, inveighed against it as a profligate job, perpetrated by a ministry *in extremis*, and aggravated by the indelicacy and indignity with which it was accompanied, towards one of the most respected public men of his day; and it did infinite mischief, accordingly, to the Whig party at the general election which followed. The junior members of the Bar of Ireland held a meeting, at which, not directly condemning the appointment, they adopted a resolution to the effect that, "as all judicial appointments in England were made from the English Bar, so all judicial appointments in Ireland ought to be made from the Irish Bar." The senior members of the Bar declined to

* Life of Lord Lyndhurst, p. 130.

attend this meeting, and drew up and published a protest against the resolution passed at it. But after this faint and ineffectual protest from the Irish Bar, a lawyer, who had, probably, never set his foot in Ireland, or in any Court of Equity in his lifetime, was accepted to preside in the High Court of Chancery, in place of Lord Plunket, the man who, eminent as he was as a statesman, an orator, and an advocate, and actually appointed by the King, was contumaciously rejected by the Bar of England, because he was an Irish barrister, and withdrawn in deference to their simple remonstrance.

Lord Plunket held his last sitting in the Court of Chancery on the 21st June, 1841, and delivered three judgments, two of which were afterwards reviewed and affirmed by Sir Edward Sugden.* Lord Campbell took his seat on the 2nd July in a crowded court, thronged with curious spectators, anxious to catch a glimpse of the Scotch lord who had come over to supplant Lord Plunket. The new Chancellor sat exactly four days, disposed of 16 causes (called short) and 10 motions, and then retired. He records his modest abnegation of the reward of his judicial services thus: "I

* Vize *v.* Stoney, and Kerr *v.* Lord Dungannon.

had voluntarily waived my claim to the retired allowance of the Lord Chancellor."*

In order to prove his grateful memory of the reception he had met with in Ireland, in the following session of Parliament, when a bill for the appointment of two Vice-Chancellors for England was brought forward, he proposed that Irish, as well as English, barristers should be considered qualified for the appointment. His gratitude was as demonstrative as his sincerity was dubious. He tells us himself, "Lord Lyndhurst accepted the amendment, but slyly insinuated that the object of the Irish ex-Chancellor was to make himself less unpopular in Ireland; so that Irish barristers might give him a more cordial welcome than he experienced when he first visited that country to supersede Lord Plunket." It is hardly necessary to add, that no such clause appears in the act passed for the appointment of additional Vice-Chancellors in England, and that the reciprocity of promotion is still all on the one side, that of the English Bar.

Lord Plunket filled the office of Lord Chancellor for about ten years, and after this retired from public life and observation almost entirely.

* Life of Lord Lyndhurst, p. 133.

The writer of the paper, which I have ventured to attribute to Lord Brougham, has discussed the history of Lord Plunket's judicial decisions in a fashion which, to my mind, imports anything rather than unqualified approbation on the part of the critic. He gives a formidable catalogue of reversals, mitigated by the statement that they were either before or after the time of his forced resignation, and, consequently, not the cause of it. Lord Brougham, in the Preface, treats the subject in a similar fashion, but with an ambiguity of style, unusual with a writer like Lord Brougham. He says*: "His judicial conduct in the House of Lords and in the Irish Chancery has been sifted closely, with a view to examine all the grounds of the defence made for the Whig job; and it appears from the Lords' journals that the only reversals of his decrees were of† those made before the pretence of his failing faculties were heard of, or‡ after the attempt frustrated in 1839, and successful in 1841." It is hard to say whether Lord Brougham points to the actual date of Lord Plunket's decisions or to the time of the discovery of their infirmities. The latter period seems the more important, so far as the Whig Government

* Preface, p. 22. † Sic. ‡ Sic.

was to be inculpated. If the fact of Lord Plunket's failing powers or deficiencies, as a judge, first became cognizable by the result of the appeals decided in 1839-1840, it might have furnished so far a plausible justification for his removal, in a very slight degree affected by the date of the actual decisions appealed from.

Lord Brougham states that "two cases in 1841 demonstrated how entire his powers were that very year of the intrigue. In Stokes *v.* Heron he made a decree, which Sir Edward Sugden reversed; but in 1845, on appeal to the House of Lords, three Law Lords concurred in reversing the judgment of Sir Edward Sugden, and affirming Lord Plunket's. In Creed *v.* Creed he had reversed a decree of Sir Edward Sugden, and the Lords, on appeal, affirmed the judgment of reversal.* He adds: "Lord Cottenham was in the Lords upon both the appeals, and it is certain that upon him was cast by his colleagues the blame of the unconstitutional dissolution of 1841. He, therefore, was well aware of the conduct towards Lord

* Preface, p. 22. Lord Brougham makes a slight mistake as to Creed *v.* Creed. It was Sir Edward who re-heard it, and reversed Lord Plunket's decree, which the Lords set up. The same error occurs in the paper in the Law Review, p. 246, which is some slight evidence of identity of authorship.

Plunket which accompanied that measure, and in all likelihood was acquainted with the pretext urged in support of that conduct." It seems hardly fair to place upon Lord Cottenham exclusively the blame of the job by which Lord Plunket was removed. Lord Brougham was a prominent member of the judicial tribunal before which Lord Plunket's decisions were brought for review, and in no single instance did he dissent from the reversal of them; and even now, when it is his purpose to extol the judicial character of Lord Plunket, while he speaks highly and deservedly of his unrivalled fame as an orator, of his remarkable powers as an advocate, he couples his eminence as a judge with a conspicuous record of reversals.

Without quite accepting Lord Campbell's estimate of Lord Brougham, as a practised rhetorician, who, to add to the effect of his sarcasm, could be extravagantly complimentary, it may be well to remember that Lord Brougham was an ex-Chancellor himself, smarting under the indignity of having been superseded by Lord Cottenham in a manner in some degree similar to the treatment which Lord Plunket had received at the hands of Lord Campbell.

Lord Cottenham's success as an equity judge precluded all revenge in the form of criticism in that

direction. He was vulnerable only as a politician; and, accordingly, Lord Brougham most unreasonably (as it would seem) attributes to him the whole responsibility of the dissolution of 1841, and all the blame of Lord Plunket's removal, as part of its plan of operations. To intensify the public odium of what was an abominable job, he extols with extravagant praise Lord Plunket's judicial capacity, and insinuates that Lord Cottenham wantonly deprived the seat of judgment of a most accomplished and efficient judge, when he had the best opportunity of knowing the unimpaired soundness of his judgment from reviewing his decisions in such cases as Creed *v.* Creed and Heron *v.* Stokes, and contrasting them with those of Lord St. Leonards, an acknowledged master of Equity. But all this, however it might answer the immediate purpose which Lord Brougham had in hand, is just neither to the living nor to the dead. Lord Plunket's great reputation as an advocate, an orator, and a statesman, needed no adventitious supports or complimentary attributes of qualities that did not belong to him. He succeeded to the bench so late in life that no person could have expected him to add to his fame the further performance of a great Equity judge. To contrast or compare him in this character with Lord

St. Leonards was simply preposterous, and provokes inquiry into that process of "sifting," by which Lord Brougham professed to arrive at his conclusions.

Any professional reader who may examine the reports of cases in the House of Lords from 1830 will find them replete with appeals from Lord Plunket's decisions. In the ten years of his Chancellorship may be counted as many as 39 reported cases of Appeals, of which 20 were reversals, 18 affirmations, and one case otherwise disposed of. These appeals culminated in the session 1839-40. The seventh volume of Clarke and Finelly's Reports contains eight appeals from Lord Plunket, including, probably, every case of sufficient consideration to bear the expense of such an ordeal.

Lord Plunket's biographer commends justly the masculine vigour of his mind, and indicates as its peculiar quality the boldness with which he grappled with difficult problems. He says: "In the few instances in which his judgments were questioned or overruled, his error consisted always in a departure from narrow authorities, and a disposition to use too freely his privileges as an Equity judge."

Mr. Plunket also speaks of "the fearless spirit which led" his distinguished ancestor "sometimes to push a principle far, or even to break through a slight cordon

of adverse decisions, in order to get at a result practically desirable."* In this his biographer too truly describes Lord Plunket. Judging from a review of the cases presented to the House of Lords by way of appeal, he would seem to have too frequently overlooked the principles and restrictions with which the domain of Equity had been regulated and circumscribed by its great founders and expositors; and, trusting to his clear and masculine understanding sometimes to have administered a moral Equity—something of the *jus naturæ*—different from that formulated jurisprudence to which he was bound to have given force and expression. The reports contain several instances of this.

The first I shall mention is that of Hodgens *v.* Hodgens, or *In re* Walker,† in which Lord Plunket sought to create an equity in favour of the children of a married woman, who had deserted them and eloped with a paramour, to be maintained out of her separate estate; because "the woman (in his own eloquent language) had disrobed herself of the character of a matron and a parent, and it was a mercy to the children to rescue them from her authority." When this cause had been before Sir Edward Sugden, he

* Life, p. 328, note. † 4 Cl. and F., 323, A.D., 1837.

took a more sober and restricted view of the powers of an Equity judge; and the House of Lords, on appeal, confirmed his view, and set aside the order of Lord Plunket.

On the hearing of this case, it happened that a supposed precedent for the course about to be adopted, and sanctioned by Lord Redesdale, had been discovered, and as it was cited at a rather late stage of the argument, it gave occasion for Lord Plunket's expressing his notion of the slight importance to be attached to the absence of precedents. He said, "The discovery of this authority goes to show how unsound a course of argument it is to seek to raise an obsolete rule, prohibiting all exercise of jurisdiction to what is just, merely because the ordinary course of precedents does not show that such a jurisdiction has been exercised; and the reasonableness of requiring, in support of such an argument, some authority to establish that the right to exercise such a jurisdiction has been denied." Now the whole character of our institutions, the jurisdiction and powers of the High Court of Parliament, as well as the High Court of Chancery, are based upon usage and precedent. Equity judges may have adapted their jurisdiction to meet the modern exigencies of society in its successive phases, but they

have shrunk from entering upon new and untrodden paths, or enlarging the domain of their authority, and more particularly, where the ordinary and constant relations of life are concerned, they have refused to exercise jurisdiction, which does not appear to be warranted by precedent. But according to Lord Plunket's *dictum*, if it be understood as it stands, whenever the intervention of the Court of Chancery is desirable to accomplish what may be in the abstract just, it will be necessary to prove a negative in order to oust its jurisdiction; the Lord Chancellor would thus become *magister morum*, the universal arbiter of moral obligations and duties in the most sacred relations of life—between parent and child, husband and wife—controlled only so far as an express precedent or decision can be adduced to the contrary.

As another instance of this tendency in Lord Plunket to allow his high moral sense to overbear his judicial serenity, I may mention the case of Persse *v.* Persse* which came before the House of Lords in 1840. It was a case between father and son, in which the son, by virtue of a deed of family arrangement, sought to force from his father, who had previously given him the larger portion of his estate, the remainder of his property, which Lord

* 7 Cl. and F. 279.

Plunket refused to carry out. The House of Lords took a less sentimental view of the matter, and held that as the father had resisted the son's demand, not on the ground of the hardness of the bargain, but upon a defence wholly untrue in fact, he should abide the consequences.

As another instance in which Lord Plunket's warm and generous sympathy with what he conceived to be just, betrayed him into an error ultimately detrimental to the object of his consideration, may be mentioned the case of Malone *v.* O'Connor* at one period as celebrated in our courts in Ireland as the Yelverton case of modern times. It involved the same element of a marriage of a Protestant and a Roman Catholic by a Roman Catholic Priest, and presented the additional feature of a series of four successive claimants, each trying to establish title as heir male to the estates of a distinguished lawyer and statesman of the last century. The plaintiff, after getting a verdict, was obliged to incur the expense of two appeals to the House of Lords, and a second trial which proved abortive, and ultimately he was advised to compromise his claims.

Another instance of those hard cases, which came

* 6 Cl. and F. 183. A.D., 1839.

before the House of Lords in the same year, 1840, was Smyth *v.* Nangle,* in which lands had been held for over a century and a half, under a lease for lives, supposed to contain a covenant for renewal. The original lease was not forthcoming. It was admitted to have contained an agreement, that upon the inserting of any life, there should be paid to the lessor and his heirs a certain fine, and it had been, in fact, seven times renewed; but the last of the lives, in the last renewal, having died in 1836, the landlord demanded back the lands, and brought his ejectment, whereupon the tenant filed a bill in Chancery to restrain him; and Lord Plunket, naturally desirous to maintain the tenant's long possession, sent two issues to a jury—one to try whether the lost lease contained any such covenant, the other whether an agreement to the same effect had existed before the lease was made. The House of Lords set aside these issues, the one as contrary to the law and practice of the Court, and the other as inconsistent with the plaintiff's bill.

In the same year, 1840,† two decrees of Lord Plunket were reversed on the ground that they were based on an award under a reference to arbitration,

* 7 Cl. and F. 405, *nom.* Nangle *v.* Smith.

† M'Cann *v.* O'Farrall, 8 Cl. and F. 30.

revoked by the marriage of one of the principal parties.

About this time there prevailed a course of offensive observation on the part of counsel who practised at the bar of the House of Lords, as regards the low standard of learning, and absence of technical knowledge and precision in equity pleading amongst the Irish bar. The topic was actually used as an argument in support of the decree in Smyth *v.* Nangle—that the style of equity pleading in Ireland was so loose and inaccurate that it was not to be judged by the strict standard to which lawyers were accustomed in England, and that the case which Lord Plunket's issues sought to establish, was intended to be raised by the pleadings, though effected in a slovenly inartificial manner. Lord Brougham, however, did justice to the pleader, who had put his client's case upon the record as strongly, and as clearly, as the facts would warrant.

In another case in the same year, 1840,* Lord Cottenham said that on several occasions the bar of Ireland were represented as not being very conversant with pleadings in a Court of Equity, but, as he believed, without foundation, "For I see no ground

* De Montmorency *v.* Devereux, 7 Cl. and F. 221.

to suppose that the rules of equity are not attended to with great fidelity."

In truth, few judges ever had the advantage of a more accomplished and learned bar to assist in the administration of justice than had Lord Plunket. I might mention the names of Warren, Blackburne, Pennefather, Lefroy, Litton, Crampton, Greene, Moore, Brooke, and many others—lawyers whom his successor, Lord St. Leonards, when presiding in the Court of Chancery, in England, I have heard said, used to refer to, in terms not unfavourably contrasting with their brethren in England. Yet, in that same volume (7) of Clarke and Finelly's Reports, there is a case* in which Lord Cottenham takes for granted, that the bar of Ireland failed to bring under the judge's notice, two of the most familiar and leading cases in equity jurisprudence,† known to every tyro at the bar. Lord Plunket's decree was reversed on the ground that the plaintiff was neither a party nor had he bound himself to give effect to the deed of trust for creditors which he was calling upon the trustees to execute in his favour. Lord Cottenham said:—"I cannot suppose but that this decree was made in consequence of

* Latouche *v.* Lord Lucan, 7 Cl. and F. 772.

† Wallwyn *v.* Coutts, 3 Meriv. 707, and Garrard *v.* Lord Lauderdale, 2 Russ. and Myl. 451.

not calling the attention of the Court to the well-established doctrine above referred to." The cases certainly do not appear by the report to have been cited below, possibly, because it was a hearing (upon report and merits) when the question might have been no longer open. The argument on the first hearing is not reported. But in another case,* argued before Lord Plunket, in the following year, 1841, these cases were cited, and Lord Plunket gave no effect to them. The cause was afterwards re-heard before Sir Edward Sugden,† and he reversed Lord Plunket's decree, and the reversal was never disturbed so far as I can find.

I fear it must be admitted that Lord Plunket, like his distinguished contemporary, Lord Lyndhurst, latterly gave way to an easy indolence, and to some degree of carelessness. He would not stoop to the mechanical drudgery of writing out his judgments whenever he could possibly avoid it, and he was indifferent as to their revision and correction—nor so far as appears from his oral judgments did he take much trouble to acquaint himself with the decisions of contemporary judges. He had for many years before he became Chancellor, ceased from the ordinary run of practice

* Field *v.* Lord Donoughmore, 2 Dr. and Walsh, 630.

† 1 Dr. and War, 227.

in the Court of Chancery, he only appeared there occasionally, and in great cases, and when he came to preside in it, he neglected to inform himself respecting the details of the business he was conducting; hence he fell into errors, from which the quick apprehension, prodigious memory, and sagacious intellect of Lord Lyndhurst—the indomitable industry, and almost universal aptitude of Lord Brougham, to a great extent saved them. His judicial course consequently was marked by an amount of protest, in the shape of appeals, to say the least, unusual.*

It was the fate of Lord Plunket and of Lord St. Leonards to have alternately succeeded each other,† and according to the custom of the country, whenever there was a change of the Keeper of the Great Seal, dissatisfied suitors tried their chance of a more favourable decision by applying to the new Chancellor for a re-hearing.‡ The re-hearings consequent on these several interchanges naturally led to some conflict of opinion between the Chancellors, and to inevitable

* See Appendix, p. 211.

† Lord St. Leonards succeeded Lord Plunket in January, 1835, and Lord Plunket succeeded him in April, 1835, and Lord St. Leonards returned again in October, 1841.

‡ This practice is now kept in check by the salutary reform of having a permanent Lord Justice attached to the Court of Appeal.

criticism of each other's judgments, and afforded to the bar topics for comparison and contrast of the respective merits of the judges. From my own recollection of these discussions, I cannot quite concur in the too partial statement of Lord Plunket's biographer, that the opinion of the bar was "nearly evenly divided in adjudging the preference to one or the other."*

It is true, as stated by Lord Brougham, that in two cases in which Sir Edward Sugden and Lord Plunket differed, the House of Lords adopted the view of the latter. The first case was Creed *v.* Creed, on the construction of a very difficult will, upon which judges might differ indefinitely. Sir Edward Sugden, however, was not quite satisfied with the result in the House of Lords. He observes* that the Chancellor (Lord Lyndhurst) does not appear to have given his attention to the case,† and that the other judge, Lord Cottenham, was so inexact in making his criticisms on the decrees, that he confounded the decree of Lord Plunket with the decree of Sir Edward Sugden.

In the other case of Heron *v.* Stokes, the House of Lords, advised by Lords Cottenham, Brougham, and

* Life, &c., p. 328.

† Law of Property in House of Commons, 421, note.

Campbell, established the decision of Lord Plunket, and reversed that of Sir Edward Sugden. The case elicited some amusing specimens of those amenities which may occasionally happen even in the exalted region of the judgment seat. It turned upon a question whether or not Lord Plunket was justified in applying a well-known rule propounded by Lord Coke (in Wild's case) in respect of real estates, to personal property. Sir Edward Sugden thought that Lord Plunket laboured under a misapprehension as to the nature of the rule. Lord Brougham, in the House of Lords, considered it was Sir Edward Sugden himself, and not Lord Plunket, who had fallen into the mistake, "and that Lord Plunket was perfectly accurate, as accurate as it was possible to be, in his reference to the case, and that Sir Edward must have taken his notion of that case from the margin of the report, which is the work, not of Lord Coke, but of the editor." To this Sir Edward Sugden rejoins,* "the learned Lord Brougham actually confounded the *decision* in Wild's case with the *resolution* which was probably a dictum invented by Lord Coke himself;" and as to the imputation of being misled by a marginal note, the reader is informed that "the only edition of Coke's

* P. 239.

reports that Sir Edward Sugden ever had, is one in which there are no marginal notes." As to the decision itself, he adds, that the Lord Chancellor does not seem to have taken any part in it, and continues:—"I cannot help expressing a hope that the House of Lords, whilst it endeavours to effect the intentions of testators, will not remove landmarks, and refuse to apply settled rules of construction to wills of personalty. The difficulties in the way of the construction adopted, were not grappled with, nor even alluded to, except partially, by Lord Campbell." He concludes thus:—"This case, which deserves the student's attention, reflects no credit on the law as a science."*

Another case not mentioned by Lord Brougham, of conflict between the judgments of Lord St. Leonards and Lord Plunket, in which the latter had decidedly the advantage, was Shaw *v.* Lawless.† It was heard before Lord Plunket in 1833—his decree was reversed by Sir Edward Sugden in 1835—but the House of Lords, on appeal, restored the decree of Lord Plunket. It was in every way a curious case, in which Lord Plunket's sound common sense and clear masculine understanding, would seem to have directed him to a conclusion manifestly right, unless overborne by tech-

* P. 248. † 5 Cl. and Fin. 139.

nical law or judicial authority. It arose on the construction of a curious will, in which Lord Plunket considered that the testator could not intend to use the word "desire" in the imperative sense, so as to convey a meaning so unreasonable and inconvenient as that a solicitor and agent should be irrevocably annexed to an estate. He said he had read of "a villein regardant to land," but this was the first time he ever heard of an "attorney" being regardant to an estate. The latest case, in which conflicting decisions of Lord Plunket and Lord St. Leonards, were reviewed in the House of Lords, was that of Sheehy *v.* Lord Muskerry. It was twice before the House, on the first occasion to the advantage of Lord Plunket, and on the second to that of Lord St. Leonards. Lord Brougham said on the second occasion,* that the litigation in this case was a reproach to the law, and certainly it was so in this sense, that upon so doubtful a question, the court of last resort did not finally determine it, when first and fully under its cognizance, instead of remitting it to the ordeal of twelve years further litigation—to result in having one Chancellor and seven Irish judges pitted against another Chancellor and eight English and one of the Irish judges.

* 1 H. of L. C. 576. A.D., 1845.

I have found scarcely any trace of Lord Plunket's judicial performances, in the House of Lords, of which Lord Brougham speaks. His name appears but in four cases altogether. In three of them he was the judge appealed from.* The other case was an appeal from the Master of the Rolls, Sir Wm. M'Mahon, sitting for the Chancellor.† It would probably have been difficult for an Irish Chancellor to be present in the House of Lords during the ordinary hearing of appeals; but, in regard to those cases, in which his decisions were involved, his absence might have been more than excused. Sir Edward Sugden, in his curious book on the Law of Property in the House of Lords, has taken another mode of supporting his own decisions and reviewing those of the House of Lords when they conflict. However, few judges can satisfactorily discharge the function of sitting in appeal on their own decisions. I believe the only remaining instance of this anomaly is to be found in the Irish Court of Appeal in Chancery, where the Lord Chancellor is an essential constituent of the court which sits in review of his own judgments.

* Vandeleur *v.* Vandeleur, 3 Cl. and F. 82. Shaw *v.* Lawless, 5 Cl. and F. 129. Lord Miltown *v.* French, 4 Cl. and F. 276.

† Corporation of Dublin *v.* Attorney-General, 10 Bligh, N.S.

In conclusion, I may repeat, that Lord Plunket's best title to fame was his eloquence in the Senate and at the bar. The verdict of posterity will probably coincide with that of his contemporaries, and with that of an Edinburgh reviewer, of a recent date,* that "as a judge and exponent of our laws, Lord Plunket was not in the first rank." Whatever other or higher rank may belong to him, he was not, as an Equity Judge, the peer of Eldon, Redesdale, St. Leonards, Cottenham, or Sir William Grant.

* *Edinburgh Review*, July, 1867, an able and discriminating paper on Lord Plunket's life.

APPENDIX.

Appeals from Court of Chancery (Ireland) to House of Lords, reported in the Authorised Reports, from 1807 *to* 1861, *inclusive:—*

Lord Chancellor.	Decrees affirmed.	Decrees reversed, or materially altered.	Cases otherwise disposed of.	Total.
Lord Manners (20 years),	23	21	—	44
Sir A. Hart (3 years),	1	1	—	2
Lord Plunket (10 years),	18	20	1	39
Sir E. Sugden (5 years),	8	4	1	13
Sir M. Brady (8 yrs. 10 mths.),	6	10	—	16
Mr. Blackburne (1 yr. 5 mths.),	1	1	—	2
Sir J. Napier (1 yr. 3 months),	1	1	—	2
Master of Rolls.				
Sir W. M'Mahon,	1	—	—	1
Sir M. O'Loghlen,	1	—	—	1
Right Hon. T. B. C. Smith,	2	1	—	3
	64	60	2	123
Deduct Duplicate Cases, like Creed *v.* Creed, in which Decrees of two Chancellors were reviewed				5
				118

There are to be found in the same series, commencing with 1 Dow. P.C., appeals from Lord Clare and Lord Redesdale; but as the reports do not cover the entire period of their Chancellorships, I have not included them.

MR. PETER BURROWES.

April, 1830.

THE ancient Egyptians had a law, which ordained that the actions and characters of their dead should be solemnly canvassed before certain judges, in order to regulate what was due to their memory. No station, however exalted, no abilities, however eminent, could exempt the possessors from this last and impartial trial. To ingenuous minds this must have been a powerful incentive in the pursuit of virtue, and a strong restraint on the most abandoned in their career of vice. Modern sketch-writing has improved upon this practice, for while it leaves unnoticed the vulgar crowd, who merely eat and drink, sleep and die, it rescues from oblivion the generous actions of those who, within their appropriate sphere, have served the interests of their country or promoted the happiness of mankind. Nothing can be more useful than to portray living character,

because it increases our acquaintance with human nature; and less extensively perhaps but more strikingly conveys that valuable knowledge of our species, which it has been the proud object of more serious history to impart. The periodicals of the present day, which have done such signal service to the literature of England, availing themselves of the attractions held out by this pleasing mode of writing, have honourably perpetuated the virtues and talents of many deserving men, which might otherwise have been unnoticed and soon forgotten.

It has often surprised me, that, in the series of beautiful sketches from the Irish Bar, which have long formed one of the chief attractions in the pages of the *New Monthly*, the eminent individual whose name is prefixed to this paper, has been hitherto omitted. Plunket and Bushe obtained the first and second places; Burrowes could fairly lay claim to the third. He was their early friend, their most formidable competitor in the career of fame, hardly inferior to either in ability, and certainly surpassed by none in purity of intention and rectitude of conduct; and though his professional life may not have been so fortunate or brilliant as that of his distinguished compeers, it has been fully as creditable to himself and useful to his country.

Peter Burrowes was born in Portarlington, Queen's County, and educated in the University of Dublin, of which he became a scholar, and where he acquired other honourable distinctions. In the Historical Society since suppressed, he was a distinguished speaker. Amongst men of no ordinary cast of mind, by early culture and, what is infinitely more serviceable, by constant collision with keen and watchful adversaries, his wits were sharpened, and his oratorical talents polished and improved. Plunket and Burrowes were at the Temple together, and on the most intimate terms of friendship, and he has been heard to say that so intense a student was Plunket that he could not be prevailed on to quit his books even for the purpose of attending the debates in the House of Commons; and that, too, at a time when the world was teeming with astonishing events, when the theme for discussion was a mighty one, and handled, too, by mighty men. Plunket's early application was in the end splendidly rewarded.

Mr. Burrowes, on returning to Ireland, was called to the bar, and like every Irish lawyer of his day, soon became a politician: his views were patriotic, and he avowed them: they were not exactly palatable to the existing government, nor likely to recommend him to favour; his chance of promotion was, therefore, distant, his

professional prospects somewhat cheerless: but, nevertheless actuated by the noblest principles and by the purest motives, he lent a helping hand to what he believed to be a glorious work, and struggled to the last with his illustrious associates in opposing measures which he thought fatal to the independence of his country—the adoption of which, however, no human eloquence could prevent or retard. He naturally associated with those whose political sentiments he supposed to be in unison with his own, and thus it was that he became intimately acquainted with the celebrated Wolfe Tone. That extraordinary man, in his memoirs, extols the character, recounts the number and intensity of the private virtues, and applauds the public spirit of Burrowes; declaring he had but one fault, and that was, that in his political principles he did not go far enough. The fact was, he associated with such men as Tone, because he believed them to be influenced by the same constitutional and enlightened views as were his own; but the moment he discovered the desperate tendency of their political opinions, he withdrew altogether from their dangerous society: he never was a violent revolutionist or a factious partisan: he loved liberty, and therefore he clung to British connexion; he hated tyranny, and therefore he resisted France. The failure

of Tone's project of invasion is known to all: he was captured, dragged to Dublin, tried in a summary manner by court-martial, and sentenced to be hanged, being sternly refused an honourable death, which, as a French officer, he had hoped to obtain. That particular period was the gloomiest epoch in Irish history, despondency or terror had seized upon the minds of all. The political adherents and partisans of Tone deserted and disowned him; one out of a thousand examples of the surprising change which a man's misfortunes work in the affections, or even recollections of his former friends. This guilty but unhappy man had been, it was asserted, unconstitutionally tried, and illegally condemned. At such a time, who would be so desperate as to impeach the justness or correctness of a mode of trial, instituted under the directions of a powerful ministry and a triumphant party? The attempt could scarcely be successful, and must inevitably expose the the individual who engaged in it to obloquy and resentment. Nevertheless, Mr. Burrowes, uniting his exertions to those of Mr. Curran, nobly endeavoured to save the life, or at least procrastinate the death, of one whom he had known in happier days, but on whom the world now looked coldly. A writ of *habeas corpus* was obtained, suicide prevented the operation of the writ!

The particulars of this sad scene of mortal suffering, so touching and so afflicting, are pathetically narrated in the memoirs of Curran by his son. I should not have introduced the melancholy subject here, but that I conceived the conduct of Mr. Burrowes on that memorable occasion places his character in the fairest point of view; and exhibits a friendship, disinterested and pure, towards an unhappy man in the darkest hour of of his adversity.

Perhaps the most excellent of his professional speeches was that delivered before a committee of the Irish House of Commons, in 1796. Peckwell's Cases present no such instance as the following of extraordinary bribery; a species of bribery, too, without a precedent in the annals of corruption. Hutchinson, a lawyer, was unwisely appointed Provost of the University of Dublin,* and conceiving the ambitious project of returning his son to Parliament as member for that body, resolved that, so far as money or patronage could effect it, no impediment should prevent the accomplishment of his wishes. Assisted by these powerful auxiliaries, he fondly hoped that there was no proud spirit which he could not bend to his wicked purpose; no opposition, however bitter,

* Since the time of Hutchinson, none but a fellow of the college has been appointed to the high office of Provost.

which he could not soften; no integrity so inflexible that he could not finally subdue. He commenced accordingly: and to do justice to the memory of that legal Provost, every engine of corruption was employed; every project which practised chicanery could suggest, was attempted; he filled the University with cabals, and converted the peaceful retreat of learning into a market for the purchase and sale of votes. I can conceive no more flagitious perversion of authority than that which this man's political mal-practices exhibited. Appointed by the government of his country to an office of the highest importance, he employs the patronage with which he is invested, not to reward merit, but to recompense political baseness: he laid snares to entrap the youth of the University, and waged war against their virtue: a second Sir Giles Overreach, he went every length that he might hear his son proclaimed a "right honourable." Of course, such a Provost did incalculable mischief; he imposed upon the weak, awed the timid, the covetous he bribed. To the honour of human nature, he was not universally successful: he encountered many who could not be tempted by their poverty to betray their conscience; who nobly spurned his offers, and despised his threats. With one

individual,* whom mere money could not gain over, he resorted to an expedient of singular enormity: this gentleman had already sat twice for a fellowship, but without success; and on the eve of the third examination, when dejected in spirits with intense study, the worthy Provost made an attempt to seduce him from his honour. The proposal though shameful, was certainly tempting: it was simply this, that if Miller would promise to vote for his son, the Provost would give him a list of the questions which he meant to ask at the fellowship examination, by which method, as Mr. Burrowes remarked, a docile parrot might appear wiser than Sir Isaac Newton. This basest of all bribes was indignantly rejected; Miller preferred the prospect of honourable poverty, to the certainty of wealth and dignity purchased at so dear a price. He had his reward; the examination for fellowship is a public one, and his splendid answering ensured his election. The facts relating to the attempt to bribe Miller were proved in his evidence before the committee. Such events supplied brilliant topics for the display of oratorical

* This gentleman is the Rev. Dr. Miller, master of the endowed school of Armagh, now far advanced in years, and universally respected.

[The father of the Hon. Sterne Ball Miller, Judge of the Court of Bankruptcy and Insolvency.—EDITOR.]

power; the picture of human nature which that contested election exhibited, was strikingly diversified; it was darkened with the meanest vices, and brightened by exalted virtue. If one youth fell a victim to corruption, another triumphed over its pernicious influence; if one fell down and worshipped the golden calf, another trampled the idol beneath his feet. The struggles of youthful conscience, the machinations of corrupt men, literature dishonoured, science insulted, and religion disgraced, with the proud criminal impudently braving consequences, these were no ordinary topics, and they required to be handled by no ordinary man. Nobly did Mr. Burrowes discharge his arduous duty: his closing speech, commenting on the evidence and the various bearings of that singular case, was a happy and successful effort, a noble specimen of pure and manly eloquence; it is replete with the finest conceptions, with glowing combinations of thought, accompanied by freshness of imagery and classic illustration, which imparts to it a peculiar charm; it far exceeds Lord Plunket's speech, delivered in the same case.

I am convinced that had Mr. Burrowes entered the imperial parliament, he would have surpassed the

* The Duke of Wellington (then styled the Honble. Arthur Wesley) sat on the Committee of the Irish Parliament, for trial of this memorable election petition, and voted against Hutchinson.

generality of his countrymen who have obtained seats in that house. He possesses the chief requisites for senatorial eloquence, simplicity and power being the characteristics of his style. By the besetting sin of modern oratory, that of talking for talking sake, he has never been infected, wisely considering that copiousness of diction or richness of imagery are but poor substitutes for that strength and compactness of style that close and connected reasoning, which alone can ensure an orator's reputation. Speakers, signalised for their prolixity, and consequently for their feebleness, appear to be governed by an ambition of a very humble character; for, like the country couple described by Goldsmith,

"They simply seek renown,
By holding out to tire each other down."

It has been ingeniously observed, concerning Messrs. Bushe and Burrowes, that the latter seemed lost in a little subject, where the graceful manner and ready eloquence of Mr. Bushe shone forth conspicuously. It requires a large subject to develope the mental faculties of Mr. Burrowes; something to warm his feelings and stir his sympathies; a great constitutional question, for example, involving the dearest rights and liberties of his countrymen. Perhaps this failing, if it can be so called, might not have been detrimental with a par-

liamentary audience; the individuals who have been considered the most effective speakers in the senate are not those smooth and facile gentlemen ever prepared to deliver, on common-place topics, neat sayings in rounded periods; those destined to govern in a popular assembly must be of another mould; taste in composition and propriety of language, though useful auxiliaries, will not of themselves ensure success, nor atone for feeble reasoning and superficial information. Power, not nicety of expression, is the grand requisite for a parliamentary speaker. I conclude, then, that Mr. Burrowes, like his friend Lord Plunket, would have acquired fame in the British senate.

It should not be forgotten, that he was a conspicuous member of the Irish Parliament immediately prior to its dissolution. The speech, which he delivered in reply to the late Lord Castlereagh, in the ever memorable debate upon the Union, fully equalled the efforts of Plunket and Grattan on the same momentous question, it evinced a thorough acquaintance with the fundamental principles of the constitution, and a just conception of the mighty theme. He did not content himself with arguing the question coldly and metaphysically; he was deeply moved, and, throwing his whole soul into the subject, he poured forth the undisguised

feelings of his heart; the noblest sentiments fell from his lips, and, coupled with the irresistible simplicity of his manner, produced a powerful effect. He chastised the young lord for his wanton aspersion of the character of Mr. Grattan, in a strain of nervous and indignant eloquence which has rarely been surpassed. The insertion of the concluding sentences he uttered in the Irish Senate may not be considered inappropriate :

"I feel but little, any portion of the noble lord's obloquy which may attach to me or my humble efforts; but I own I cannot repress my indignation at the audacious boldness of the calumny which would asperse one of the most exalted characters which any nation ever produced, and that too, in a country which owes its liberties and its greatness to the energy of his exertions, and in the very house which has so often been the theatre of his glorious labours and splendid achievements. I remember that man the theme of universal panegyric; the wonder and the boast of Ireland for his genius and virtue. His name silenced the sceptic upon the reality of genuine patriotism; to doubt the purity of his motives was a heresy which no tongue dared to utter; envy was lost in admiration; and even those whose crimes he scourged, blended exalted praises with the murmurs of resentment. He covered our

unfledged constitution with the ample wings of his talents, as the eagle covers her young; like her he soared, and like her he could behold the rays whether of royal favour or royal anger, with undazzled unintimidated eye. If, according to Demosthenes, to grow with the growth, and decay with the decline of our country, be the true criterion of a good citizen, how infinitely did this man, even in the moment of his lowest depression, surpass those upstart patriots who only become visible when their country vanishes. Sir, there is something most singularly curious, and, according to my estimation of things, enviable in the fate of this great man; his character and his consequence are, as it were, vitally interwoven with the greatness of his country; the one cannot be high and the other low; the one cannot stand and the other perish. This was so well understood by those who have so long meditated to put down the constitution of Ireland, that, feeling they could not subdue, they have incessantly laboured to calumniate her most vigilant and ablest champion. They appealed to every unguarded prejudice, to every assailable weakness of a generous but credulous people, they watched every favourable moment of irritation or of terror, to pour in the detested poison of calumny Sir, it will be found on a retrospect of Ireland since

1782, that her liberties never received a wound that a corresponding stab was not inflicted at his character; and when it was vainly hoped that his imperishable fame was laid in the dust, the times were deemed ripe for the extinction of our constitution. Sir, these impious labourers cannot finally succeed; glory and liberty are not easily effaced; Grattan and the constitution will survive the storm!"

After the Union, Mr. Burrowes was engaged in the extensive practice of his profession, and in 1803 was called on, in his legal capacity, to perform a most melancholy duty. The circumstances of Emmet's insurrection are generally known. After that misguided youth was betrayed into the hands of the government, his friends applied to Mr. Curran to act for him as counsel at his approaching trial; this was peremptorily refused. Emmet's romantic attachment to Curran's daughter was notorious; he had dearly proved the strength of his "early affection's vow," for it was in attempting to take a last farewell of the object of his enthusiastic love that he was arrested. Mr. Curran was suspected of favouring his revolutionary principles, and, thus delicately circumstanced, his declining to appear as counsel for Emmet was, perhaps, pardonable. Plunket was then Solicitor-General,

and, possibly, the generality of the bar might not be over-anxious to signalise themselves in defence of the young rebel. In this calamitous situation, the relatives of Emmet applied to Peter Burrowes; with alacrity he accepted the office of his counsel, but was spared the trouble of making any unavailing speech in his defence. When the trial came on, the crown lawyers spoke long, and somewhat vindictively against the prisoner. Plunket exposed the folly of his wild adventure in a laboured and sarcastic speech; for which he has been unfairly calumniated, his enemies saying that he was the early and intimate friend of Emmet, an assertion which was totally false; however, even the most stubborn loyalist must admit that his speech in reply, on that occasion, as the prisoner called no witnesses, was a *little* unnecessary. After the crown lawyers were exhausted, Mr. Burrowes rose to speak, when the unfortunate though undaunted youth, laying his hand upon the shoulder of Mr. Burrowes, pressed him to his seat, observing that while conscious of his zeal and intrepidity, he should not harass himself in making unavailing exertions on behalf of one whose fate was sealed. When asked, "had he anything to say why sentence of death should not be passed upon him;" he answered, "I have nothing to say why sentence of death should

not be passed upon me, but I have much to say why sentence of infamy should not be attached to it." His pathetic but manly appeal thrilled every heart, and drew tears from every eye. Lord Norbury was alone unmoved, but this was as it should be, for it may be an unseemly thing to behold the gravity of a judge discomposed by the intrusion of idle sympathetic regrets. Mr. Burrowes has not yet learned to speak of this tragical scene without emotion. He recounts an anecdote which strikingly exhibits the chivalrous devotion of Emmet's attachment to Miss Curran; when he heard that her residence was to be subjected to the indignity of a search after treasonable papers, he wrote to the Secretary of State, offering to plead guilty forthwith, provided the government would spare the feelings of Miss Curran, and abstain from the commission of the intended insult. There exists no individual for whose splendid talents Mr. Burrowes entertains so high respect as Lord Plunket's, and yet he has been heard to declare that Emmet's dying speech, as a piece of pathetic eloquence, infinitely surpassed the professional efforts of the distinguished men by whom that prosecution was conducted. It must not be supposed that he has ever even hinted that the punishment of Emmet was unjust; on the contrary, it is while he condemns the madness

and criminality of his Quixotic enterprise, that the recollection of his talents, his courage, and his love excites feelings of tenderness and pity for his untimely fate.

About the year 1805, Mr. Burrowes was appointed one of the counsel to the revenue, a situation then attended with considerable emoluments. Shortly after, when the party whose principles he had espoused went out of office, he also resigned, although his place had never been considered a political one, and although his circumstances could but ill afford so great a sacrifice. This voluntary resignation of several thousands a-year, which, to many gentlemen of the profession, might appear inconsiderate, or even romantic, proceeded from an anxiety, perhaps too sensitive, to preserve his political character from the charge of cupidity or vacillation.

Among the many excellent professional speeches of Mr. Burrowes, that delivered in the trial of Robinson, for bigamy, will perhaps be found most attractive. It is a beautiful narrative of facts, rendered peculiarly touching by its unaffected simplicity. The circumstances of the case were unusually afflicting; the criminal, reduced to the lowest extremity in point of health and fortune, introduced himself to a Mr. Berry,

an eminent solicitor in Dublin, and, by the plausibility of his manner, prevailed upon him, not only to undertake several almost hopeless suits, but to supply him with the means of existence; and finally induced his unsuspecting benefactor to admit him beneath his roof. Mr. Berry had a daughter, young and lovely; he could have entertained no suspicions of the infamous designs of his perfidious client, knowing him to be a married man, and, moreover, mean in appearance, and shattered in constitution. What followed can be shortly told; through means the most unaccountable, he acquired a fatal influence over this young lady's mind, and prevailed upon her to consent to a private marriage, and then, Wakefield-like, seemed perfectly contented, and returned, with his victim, to reside as a stranger in her father's house. At length, the unnatural union was discovered, and a prosecution was the consequence. The singular excellence of Mr. Burrowes' speech on this occasion is, that the advocate, though seemingly giving but a plain statement of facts, is, in reality, making a most pathetic appeal to the feelings of the jury, and taking the surest means of enlisting their sympathies on his side; thus proving that he thoroughly understood the difficult art of forensic eloquence: that language, and manner, natural and unaffected, will win

the favour of a jury, while to besiege them with unnatural combinations of words, or to dazzle their minds with pompous phrases, will probably defeat the ends which the advocate hopes to accomplish.

The trial of Dr. Sheridan, under the Convention Act, passed in Ireland in 1793, and involving, as it did, the invaluable right of petitioning, created universal interest. Mr. Burrowes' defence of that gentleman has long been considered one of the best specimens of legal and constitutional reasoning extant: like his other speeches, it is free from false ornament; it is classical, convincing, and condensed. The student may perhaps be induced, from what has been written, to examine the speeches of Mr. Burrowes: he will not find in them either the contemptuous sarcasm of Plunket, or the sparkling wit of Curran; but incessant irony displeases; and though to discover remote and beautiful analogies strikes the imagination, yet it fails to satisfy the yearnings of the mind, which demands and requires something more solid and enduring. It is not, I conceive, extravagant praise, to compare the speeches of this gentleman with Lord Erskine's, those exquisite models of forensic eloquence; they are alike distinguished by energy, fulness of sentiment, clearness of thought, vigour of style, and beauty of illustration.

In private life, there never was an individual more universally respected than the subject of this sketch, or one whose society was more eagerly coveted. To young men, his conversation is peculiarly attractive: in no respect dogmatical or dictatorial; he will unreservedly communicate the most interesting anecdotes of Grattan and Flood, honoured names! and other eminent characters of his times, with all of whom he was intimately acquainted. He must have been a dangerous rival to contend with in his younger days, for even now, though the freshness of youth is somewhat worn off, a lovely girl will avert her bright eyes from her prosing partner to lend an attentive ear to his more intellectual and animated converse. He is an invaluable companion on an excursion to roam over the Wicklow hills, and explore the sequestered glens of that romantic country; possessing a keen relish for the beauties of nature, and bearing little accidents without repining, he promotes every innocent amusement, and without evincing an exuberance of animal spirits, which might be unbecoming in one of his years and station, he is uniformly so cheerful and so joyous that a young man is almost ashamed of appearing dull in his presence.

The young aspirant for professional distinction may

contemplate the character and conduct of Mr. Burrowes with advantage.

I would add, Mr. Burrowes bears some resemblance to that British statesman, whose character he admired most, Charles James Fox. I mean not, for it would be worse than flattery, to ascribe to Mr. Burrowes that extent of information, greatness of soul, or splendour of abilities, which, whatever may be thought of the use he made of them, belonged to Fox: I allude merely to their private virtues. The closing remarks of Mr. Hazlitt, in his admirable sketch of the celebrated statesman, are descriptive of Mr. Burrowes *to the very life*: "He was superior to every kind of jealousy, of suspicion, of malevolence, to every narrow and sordid motive; he was perfectly above every species of duplicity, of low art and cunning; he judged of every thing in the downright sincerity of his nature, without being able to impose upon himself by any hollow disguise, or to lend his support to any thing unfair or dishonourable; he had an innate love of truth, of justice, of probity, of whatever was generous or liberal; neither his education nor his connexions, nor his situation in life, nor the low intrigues and virulence of party could ever alter the simplicity of his taste, or the candid openness of his nature; there was an elastic

force about his heart, a freshness of social feeling, a warm, glowing humanity, which remained unimpaired to the last; he was by nature a gentleman."

NOTE BY EDITOR.

April, 1870.

THERE are men, few in number, indeed, but still occasionally to be met, who, possessing almost every endowment, are deficient in the faculty of self-assertion, and, from want of force of character, from over-delicacy of sentiment, or excessive refinement of nature, allow themselves to be thrust aside in the struggle of life by inferior men. Such a one seems to have been the subject of this sketch, Mr. Peter Burrowes.

Somewhat the senior in age and standing at the bar of Plunket and Bushe, he seems to have held a place among his contemporaries not very much lower; and, judging from the specimens that remain of his speeches in Parliament and at the bar, he was a man who might fairly have contested the palm with either of them, or with the distinguished advocates of a later time—

Brougham, Copley, or Scarlett, if there had not been some defect in what may be called the physical or external qualifications essential to complete success. He, doubtless, wanted the graceful action, silvery voice, and majestic presence of Bushe—the calm dignity and reserved power of Plunket and Copley —the exuberant fancy and cutting sarcasm of Brougham. His "utterance was laborious; he spoke from the chest."* His voice was not full or flexible, and he never acquired the graces of action and intonation — accomplishments which, with all due deference to his biographer, he might legitimately have cultivated, without the least "insult to his understanding," and without encountering the smallest suspicion of "artifice or trick."

Burrowes had been the intimate friend and admirer of the gifted family of the Emmets. Mr. Whiteside has mentioned how he was engaged in the defence of the unfortunate Robert Emmet, on his trial for high treason, after the tragical insurrection of 1803, in which the amiable Lord Kilwarden (Mr. Whiteside's predecessor in the office of Lord Chief Justice), was massacred in the streets of Dublin, in the

* Memoir of Burrowes, by Waldron Burrowes, Esq., p. 2.

presence of his daughter. The murder of Lord Kilwarden shocked and disgusted every right-minded man, and none more so than the unfortunate Emmet, or his counsel, Mr. Burrowes. In a later state trial, the King *v.* Kirwan (1812), he took occasion to bear testimony to his worth: "We all remember that revered character. We know that he loved the laws and constitution better than life itself. The glories that surrounded his last moments, and which rendered his death as enviable as it was disgraceful to the monsters who caused it, cannot soon pass away. His memory will live entombed in the heart of every Irish lawyer as long as his profession shall retain any dignity, or the laws upon which he shed such lustre shall be held in any estimation."

Lord Plunket's part in this trial has been noticed. It is erroneously stated, in two publications, that the libel for which Cobbett was prosecuted, and an action brought against him, was from the pen of Cobbett. It was published in Cobbett's Register, but was from the pen of one of his Majesty's Judges of the Common Pleas, Mr. Justice Johnson. Mr. Burrowes is stated to have through life indignantly refuted the calumny to which Mr. Plunket was exposed.*

* Life of Lord Plunket, vol, i., p. 217.

Mr. Burrowes' duel with the Hon. Somerset Butler has formed the subject of an amusing story, first given by that inveterate scandal-monger, Sir Jonah Barrington, with his usual amount of embellishment; and again, with questionable taste, in the *Dublin University Magazine*. Mr. Burrowes' biographer has thought it worth while to publish a corrected version of the story, explaining how the penny taken in change at the Post-Office got into the capacious pocket of his waistcoat, with his letters, and thus providentially intercepted the ball of Mr. S. Butler in its unhallowed mission.

Mr. Burrowes had attached himself to the Whig party. In 1806, when the Grenville administration acceded to power, he was appointed Counsel to the Revenue—a very lucrative post, which he resigned in 1807. It is stated that subsequently Mr. Secretary Peel offered him the office of Third Sergeant at Law (not First Sergeant, as stated), which he declined to accept, feeling he could not consistently adopt the views of the Government. The appointment was conferred on Mr. (afterwards Justice) Burton (1817). In 1821 Lord Sidmouth, being Prime Minister, Mr. Burrowes was appointed Chief Commissioner of the Insolvent Debtors' Court. He was then in his 64th

year, and filled the office for 15 years. He retired (1835), aged 82.

In 1841 he went to London for surgical advice, and there happened to meet his old friend, Lord Plunket, on his way to Nice, after his being succeeded by Lord Campbell in the Chancellorship. Their leave-taking was in a long and affecting interview, each feeling that he saw the other for the last time. Mr. Burrowes died shortly afterwards, at the advanced age of 89. He is buried in Kensal-green Cemetery.

MR. JUSTICE BURTON.

THERE is no branch of our constitution which we contemplate with more delight than the judicial department: the system is almost perfect in theory, although it has sometimes been damaged in practice. The British judge is independent alike of the Sovereign who appoints him, and of the people over whose lives and properties he presides; were it otherwise, so long as the supreme magistrates held their situations at the will of the Crown, removable at pleasure, fear might render them venal, subservient, or ready to truckle to the powers on whose breath they depended, and from whom they might expect fresh promotion by unworthy compliances. Whatever *hopes* the members of the bench may now entertain, there is but little to affect their fears; and it is the opinion of some that it might be an improvement on the present system, if the first appointment of the judge was final, without a chance of translation or advancement. The most diffi-

cult and delicate duty which the Government is called upon to exercise in the disposal of its patronage, consists in the selection of the judges of the land, because experience has proved that mischievous and melancholy results have followed, and ever will follow, from subordinating the bench to favouritism or to the spirit of faction; nor can it be doubted that any administration would incur an awful responsibility, and deserve the hatred of honest men, which would place on the bench imbecility and ignorance, in preference to knowledge, integrity, and capacity. It is not that the corrupt or hesitating judge startles and disgusts the public by some act of barefaced and enormous turpitude, or of reckless subserviency to the powers that be: it is in the thousand instances which occur in the daily administration of justice, between man and man, that the mischief is done. Here idleness, caprice, incapacity, or prejudice may work their will, to the prevention of justice and the ruin of the suitor. Who has ever travelled the circuit, and witnessed the almost absolute power which a single judge, in certain cases, exercises over property, liberty, and life, that must not tremble at the idea of authority so vast being consigned to inefficient hands? How dreadful the notion

of a man's life being sacrificed to a whim, or his property lost by a jester; and the initiated know how fatal it is to a cause for even a prejudice to cross the mind of the judge at a critical moment. These considerations, surely, should be enough to induce any wise government to evince their love of justice, by appointing to the bench men above suspicion, of large understanding, of uncompromising integrity, of competent knowledge, and whose character and fitness for judicial business the public have previously stamped by their confidence and support.

But if the bar, as a working profession, has been improved within the last thirty years, so the constitution of the Irish bench has been changed materially for the better. We can assert, without fear and without flattery, that there are some as able men now upon the Irish bench as ever adorned the judicial station; men who were distinguished not merely as plodding, safe, and careful practitioners, but for the ample measure of their natural genius; for the strength and grasp of their intellect; for depth of knowledge, accompanied by a lofty and splendid eloquence. Their celebrated speeches are amongst the finest specimens of genuine oratory; their grave and weighty arguments afford irrefragable evidence of learning,

solid, extensive, and profound; and since their elevation to the bench, it is no calumny upon the bar to state, that their places have not been supplied. Impertinent and flippant speakers they were not; they united fact with beautiful illustration; profound reasoning, with brilliant elocution; and combined manliness of logic with the charms of classic lore. There may have been those amongst them who have been touched with the infirmity of some great minds—an incapability of descending to the minutiæ of smaller questions, being absorbed in the contemplation of nobler things. But the perfect lawyer is he who, with a soul elevated and aspiring enough to reach and comprehend a subject, no matter how large, remote, and difficult, and with a genius capable of soaring to the loftiest heights, can yet exhibit as much tact upon small matters as commanding intellect when required—can seize upon a little point, or expound a mighty principle. No profession affords more ample scope for all the faculties and energies of the mind, and for the useful habits of the man of business. That practice and experience are essential to constitute the judge, there can be no doubt —no man could be a good judge without them; but when they are united to extensive acquirements, general as well as professional—to natural eloquence

and natural talent—the picture of a perfect magistrate is complete. And let no man say that extensive literary attainments are not useful to the judge. Do they not soften the disposition and humanize the character? and is it not of the last importance for the judge to have profound and comprehensive views of human nature, to be enabled to dive into the secret springs of the soul, and penetrate the hidden motives of conduct?

Perhaps there is no individual on the Irish bench who unites these qualifications in a greater degree than Judge Burton. Animated by no other feelings than those of respect and admiration, we would hazard a few remarks upon his character—a character which can stand the test of close examination, rendered only the purer and more exalted by the scrutiny.

Judge Burton affords the best illustration of any man on the bench, of unassisted intellect forcing its way to eminence—triumphant over every difficulty. Few individuals have been surrounded, at their outset in professional life, with more formidable obstacles. He was an Englishman, a stranger unknown to the Irish public and the profession. The period also, before the Union, in which he commenced his career, was eventful. The stormy politics of the day dis-

turbed the smooth current of the legal profession, and plunged many of its members into furious political controversies. Terrible events had happened, and the social fabric was shaken to its very base. A struggling industrious barrister could scarcely then expect an opportunity of displaying his knowledge of Coke upon Littleton: when a tempest of civil strife was raging round him, it was not the most auspicious moment at which to seek a livelihood by close application to the law. But the troubles of that unhappy period of our domestic history, were not his only difficulties. The profession was stocked with men of fine genius and uncommon energies, whose powers and acquirements were brought into constant action and collision by the desperate circumstances of the times. They filled a large space in the public mind, and deservedly, for their capacity equalled the emergency that called it forth. Peaceful times encourage industry, and the studious habits of learned men; but periods of civil distraction and commotion, when the feelings are roused and the passions infuriated—when discord, tumult, and confusion threaten ruin to the State—are fruitful in producing men of vast mental powers.

Mr. Burton was thrown amongst persons distinguished amongst their predecessors and successors for

eloquence and knowledge, many of whom have run a glorious race, and reached the loftiest elevation to which their ambition could aspire. It required no small portion of energy and talent to keep pace with such illustrious rivals—to prevent the brilliancy of their fame from consigning his best efforts to comparative obscurity. That Mr. Burton held his ground among the best of them, is no small praise; for the value of our success should be estimated by the number and excellence of our competitors. Some people imagine that his professional advancement was entirely owing to the friendship of Curran. Unquestionably it redounds to his credit to have acquired and preserved to the last the friendship of that remarkable man; but his friendship, however ardent and sincere, could no more have gained practice for Mr. Burton at the bar than it could have made him Emperor of China. Mr. Burton was not in extensive practice till Curran had passed the zenith of his fame; and if he had not been more persevering and industrious than his distinguished friend, obscurity must have been his inevitable lot. Curran was incapable of severe mental exertion, or of undertaking the drudgery of his profession. Difficult, abstract, legal questions, he never could investigate or endure. A second Curran would

hardly have succeeded at the bar. Mr. Burton, on the contrary, if he had not the imaginative, yet possessed the reasoning faculty to the highest perfection, and a clear inquiring spirit, which taught him to explore with patience the principles and details of any question that came before him, to comprehend it with perfect distinctness, and discuss its bearings with consummate skill.

The rich gifts of fortune were not suddenly bestowed on Mr. Burton; nor did the patronage of the great, or, accident, or luck—which have ere now befriended many clever schemers—fill his pockets or procure him place. On the contrary—and the fact may encourage talents which for years have lain undiscovered, and knowledge that has not yet been brought to light—he toiled on for a considerable period without business, and almost without hope. For some years he went the circuit unnoticed, and for that very reason was a favourite with the bar, who generally regard with exceeding kindness the amiable, gentlemanly, good-natured young men, who are unlikely to intermeddle in the monopoly of the few; but when the good-natured youth exhibits symptoms of ability, and what is worse, a likelihood of getting business, he is sometimes pronounced to be forward and pre-

suming. It is said that chance threw a suit, involving a nice and difficult question on a right of fishery, into the hands of Mr. Burton, in the town of Tralee. The illness or the absence of his leader, and the *innocence* of his colleague, consigned the case entirely to his management; and so much deep and technical knowledge, such prompt ability did he display, that on circuit he was never afterwards unemployed. A fishery question was argued subsequently in the Court of King's Bench, and the argument of Mr. Burton, delivered by the lips of Curran, on that occasion, which is fortunately preserved, exhibits a closeness of reasoning, comprehensiveness of knowledge, and extent of research, calculated to raise him to the first eminence in his profession. He soon after obtained practice, and eventually reached the most extensive enjoyed by any individual of his time, and this by no mean acts or questionable practices. *His* business was a tribute paid to merit, large acquirements, capacity, and industry. He became distinguished even for his eloquence, not flashy or diffuse, but grave, energetic, pointed, and convincing. When thoroughly warmed with the subject, Mr. Burton has surprised and delighted his audience by the boldness of his conceptions, the justness of his views, and the vigour of their expression.

He was not deficient in sympathy and passion, when the subject required them. The current of his feelings flowed warmly round his heart, but they were controlled by his sagacity, and regulated by the soundness of his judgment. He never offended the good taste of his hearers by violent and tasteless declamation. He was not deficient in matter, and, therefore, required not the aid of a multitude of unnecessary words to cloak his ignorance, or hide the poverty of his mind.

Perhaps one of the most important and remarkable cases in which Judge Burton figured was the memorable trial between the late Chief Baron and the Crown, respecting the right of appointment to the office of Clerk of the Pleas in the Court of Exchequer.* This case, with the arguments of counsel, and the judgments of the Court of Error in full, has been accurately reported by Mr. Greene;† and it tended more to raise the reputation of the Irish bar throughout the empire than all the brilliant declamations of the Four Courts. Saurin, Plunket, Bushe, and Burton, argued the case with unrivalled and splendid ability. There was no authority, however ancient, that was not ransacked; no principle, however apparently remote,

* The King *v.* O'Grady.

† The late Mr. Baron Greene.

which, if useful, was not applied; no source of legal learning, that was not explored and exhausted for the subject. The reader of Mr. Burton's argument would be surprised at the quantity of knowledge collected from every quarter, evinced upon a theme seemingly barren, and he would be struck with the lawyer-like arrangement of so large a mass of facts, principles, and authorities; and still more by the exactness of the logic and the strength and compactness of the reasoning which pervaded his matchless argument. The language in which the whole was couched was strikingly appropriate, expressing the idea with perfect precision, and proving that the mind of the speaker was deeply imbued no less with the principles than the phraseology of the law. On the trial before the jury, Saurin was profound and luminous, Plunket bitter and severe, Bushe brilliant as ever, avenging himself upon his powerful opponent with many a splendid sarcasm, while he dazzled his fascinated audience. Burton shone not so brightly, but with a steadier light, neither heated by passion, nor led astray by fancy, he reasoned with powerful effect, in an argument compressed and vigorous. It was the understanding alone he sought to satisfy; striving to force conviction on the judgment by the weapons of truth and reason. He exhibited the

utmost stretch of those powers of demonstration which the thing to be demonstrated required or admitted. If he did not soar to the highest flights of genius, he fathomed the utmost depths of reason. The imagination may surprise or overpower by the splendour of its display, but the reasoning faculties of the human mind, in their effects, are no less wonderful, and infinitely more useful. The one may captivate or astonish by its brilliant novelties, but it may likewise mislead honesty, and varnish over injustice; while by the other delusion is dispelled, justice secured, and the judgment restored to the throne from which the imagination had for a time expelled her.

If we wished to impress the learned professions in England and Scotland with a suitable opinion of the Irish bar, we would rest our claims to their respect and admiration on the cogent evidence which the report of the case of Chief Baron O'Grady affords, of sound judgment, manly logic, learning extensive and minute, clothed in the most emphatic and effective language.

Judge Burton has sat for several years in the Queen's Bench, discharging his high duties with exemplary ability and skill. Conscientious and impartial, he has administered justice according to law, without fear,

favour, or affection. The industrious habits of the lawyer have not forsaken him on the bench. He decides nothing without patient investigation and research, and many of his judgments are master-pieces of legal exposition.

He is merciful, and delights not in the shedding of human blood. He believes in a truth which in this country has been, in times past forgotten or overlooked, that justice may be vindicated, and the laws upheld, without a profuse waste of human life.

Judge Burton is, no doubt, an ornament to the Court of which he is a member; but it is when alone, on circuit, and presiding in a Criminal Court, that the virtues of the judge shine forth with peculiar brightness. The calm attention, the unwearied assiduity, the inflexible impartiality, with which the case of each unfortunate prisoner is heard and decided, must gain the respect of every candid spectator. When the liberty or life of his fellow-man is at stake, he is not fretful, impatient, arrogant, or unmerciful, availing himself of his vast power to crush a prisoner. A sense of duty, a lofty impartiality, pervade his conduct. The reign of cruelty, we hope, has now passed away for ever; nor will the greatest learning or splendour of genius hereafter be allowed to compensate for the want of principle or

virtue. Neither the prodigious erudition of Lord Coke, nor the subsequent nobleness of his conduct as a patriot, will ever wipe off the foul blot which his conduct to Sir Walter Raleigh has fixed upon his character. The fame of Lord Bacon, as a philosopher, is immortal; but his misconduct, as a judge, will be immortal likewise. It cannot diminish the value of his discoveries, but it will sully his glory, and tarnish his good name.

In a less elevated sphere, but a sphere in which such qualities were pre-eminently useful, not reaching the erudition of a Coke or the philosophy of a Bacon, Mr. Justice Burton has displayed all the highest qualities of the British judge, without the least alloy of the vices which have sometimes accompanied and darkened judicial greatness.

The name and character of Judge Burton will ever be revered in the country of his adoption.

NOTE BY EDITOR.

April, 1870.

MR. JUSTICE BURTON was born in Northamptonshire, in October, 1760. An obituary, published shortly after his death, professes to trace his descent lineally from a certain De Burton, a companion in arms of the Conqueror, who had been duly rewarded with a comfortable share of the Saxon spoil, in the shape of estates in Staffordshire; another offshoot from the same stock was the author of that curious book of quaint sayings and profuse quotations, "Burton's Anatomy of Melancholy."

Mr. Justice Burton, and his twin-brother Edmund, are said to have been schoolfellows of Mr. Addington, afterwards Lord Sidmouth, and Home Secretary and Prime Minister of England, and the family of the Burtons and the Addingtons had been, as stated, on terms of friendly intimacy; if this be so, it redounds much to the independence of spirit and manly self-reliance which led Mr. Burton to look for advance-

ment in life to his own unaided exertions rather than to the patronage of his influential schoolfellow. Those who have had the privilege of knowing Mr. Justice Burton can well believe that at no period of his life did he ever solicit a favour from any person or any Government, and that even when a silk gown was conferred upon him at the instance of his friend, Mr. Curran, the application was made without his knowledge. Mr. Burton did not happen to enjoy the advantages of a collegiate education, but he was nevertheless a well informed man and an excellent classical scholar. He came over to Ireland sometime about the year 1787, and shortly afterwards his name was entered at the King's Inn with a view to his being called to the Irish bar. He had previously entered as a student at the Inner Temple, and why he changed his purpose of going to the English bar and came to Ireland, is not authentically known, but it was generally believed that he came over under an engagement to assist the celebrated John Philpot Curran, by noting his briefs, and giving such aid as an industrious intelligent junior may render to a leader in extensive practice. The obituary to which I have referred professes to deny this, but does not do so in fact. It is not, if true, in the smallest degree to his discredit. Mr. Bur-

ton commenced his studentship for the bar in his 28th year, rather a late period for one who does seem to have been otherwise employed, and was not called to the bar until he was in his 32nd year—from which it may be presumed that his resources were not superabundant, and his having taken a wife before he got a profession did not probably increase them. Be this as it may, his coming to Ireland, a stranger, with nothing but his learning and self-reliant spirit, renders his character the more interesting. He came to fight his way with intellectual rivals of no mean capacity—Curran, Saurin, Plunket, Bushe, Joy, Lefroy, and the two Pennefathers, and well did he hold his own against them, and maintain his position, by sheer ability, learning, and industry.

He was called to the Irish bar in March, 1792, and it is said that he soon got into practice. In little over two years he argued a remarkable case* (January, 1795) in the Court of King's Bench, as junior to Mr. Curran having been probably introduced into it through his recommendation. His client was the proprietor of an estate bordering on the river Lee, near Cork, and had an ancient oyster bed adjacent to it, in respect to which

* Hayes *v.* Bridges, reported in Ridg. Lapp. and Sch. 390.

he claimed the sole and exclusive right to fish for oysters in the place, and in assertion of this right, he had distrained the plaintiff's hooker, which went to dredge for oysters, which he (the plaintiff) said he had a right to do in any part of a navigable river like the Lee; and the question was, whether the sole and exclusive right to fish in a navigable river could be held as appendant to an estate in the land adjacent to it.

The case demanded extensive and accurate learning as to the prerogative of the Crown, the rights of the subject in navigable rivers, the nature of incorporeal hereditaments, and the speech of Mr. Burton was a perfect specimen of completeness, logical precision, and clearness. The arguments of the several counsel on behalf of Mr. Burton's client are not distinguished in the Report: but we have it on a tradition derived through the late Chief Justice Bushe, that Curran had the generosity and grace to acknowledge before the Court that the argument which he delivered came from Mr. Burton. The judgment of the Court was in favour of Mr. Burton's client, and it is very probable that immediately after this effort, his character as a sound and accurate lawyer, became established, and that he rose into extensive practice on the Munster Circuit, which he joined.

In 1807 Mr. Burton, in company with Mr. (after-

wards Judge) Jebb and Mr. Goold, received the honour of a silk gown. His Majesty's service in Ireland was in those days considered sufficiently provided by 25 counsel, whereas, at the present time (1870), the exigency of the Crown business has increased to such an extraordinary degree as to to demand no less than 110 counsel, learned in the law, to look after its interests, and the Queen, probably, monopolizes for her particular service one-sixth or one-seventh of the whole bar of Ireland.

In 1817, as has been already stated,* when Mr. Burrowes fastidiously declined to accept the vacant Sergeantcy, it was conferred on Mr. Burton. In that same year, as Sergeant Burton, he distinguished himself in the case of the Attorney-General *v.* O'Grady particularly, in the Court of Exchequer Chamber, a case remarkable in many ways from the novel and important questions which it involved, from the extraordinary amount of learning and forensic eloquence which it elicited, and from the brilliant passages of arms which it brought forth between the principal actors in the contest, Plunket and Bushe.

The questions were as to the validity of an appoint-

* P. 236.

ment by the Chief Baron of the Exchequer of his son to the office of Prothonotory or Clerk of the Pleas in the Exchequer, an office of great trust and pre-eminence; and, secondly, whether Mr. O'Grady, being admitted to that office by the Court of Exchequer, it was proper to challenge the act or decision of the Court by a criminal information in the nature of a *quo warranto*, and deal with the person so appointed as an usurper. It involved serious questions of constitutional law as well as to the ancient jurisdiction of the Courts of Common Law. The right to make such an appointment was admitted to be possessed by the Chief Justices of the King's Bench and Common Pleas.* The report of the case of Mr. (afterwards Baron) Greene, affords to any lover of constitutional law, of deep research, logical reasoning, and eloquent exposition, a delightful intellectual treat.

Sergeant Burton, who was counsel with Mr. Plunket for the defence, was called on to open the case in the Court of Error unexpectedly. His argument was a model of propriety and lucidity, learned, minute, and comprehensive. He was followed by

* This right was afterwards appropriated from the Chief Justices in Ireland and made part of the political patronage of the Lord Lieutenant. In England it is otherwise.

Bushe, the Solicitor-General, in a speech brilliant and telling, full of powerful reasoning and eloquent language; but that of Plunket was a still more perfect performance—a close chain of reasoning, relieved by passages of wit, like that in which he ridiculed Bushe's fanciful invocation of the shades of Mansfield, Somers, Holt, and Hale. He eloquently arraigned such a prosecution by law officers of the Crown as an unconstitutional interference with the proceedings of Superior Courts of Justice, which should be corrected only by way of appeal.

Mr. Burton was placed in the Court of King's Bench in 1822, where he sat for over twenty-five years. Upon the judgment seat his faculties had full scope and application. His extensive and accurate learning, placidity of temper, and sound and impartial judgment might be equalled but could not be surpassed. He was the exemplar of a good and upright judge; and though from the sobriety of his demeanour his quiet career may have attracted less of public attention than that of more demonstrative members of the bench, his eminent worth was appreciated amongst those who were really competent to form an opinion. In his own unaffected manner he occasionally expressed principles of law in propositions

so plain and apparently self-evident that they seemed truisms, yet when examined they proved to be critical corrections of errors long current in the profession, and almost inveterately established. As an instance of this may be mentioned the canon of construction propounded by him in the year 1828,* afterwards adopted by the House of Lords in the well-known case of Grey *v.* Pearson, in 1857,† that the language of wills, and deeds, and acts of Parliament is to be interpreted in the grammatical and ordinary sense of the words rather than in an artificial sense, to meet speculations of lawyers as to what the intention of the parties might have been; a mode of interpretation by which the word "and" might be rendered into "or," and "or" into "and." A layman might feel astonished that it required the highest tribunal in the land to tell us that the language of men's wills is to be so interpreted, or that a learned Lord (Lord Wensleydale) should have had occasion to say, "I have been long and deeply impressed with the wisdom of the rule now, I believe, universally adopted, at least in the Courts of Law in Westminster Hall, that in constructing wills, and indeed statutes, and all written instruments, the grammatical and ordinary

* Warburton *v.* Loveland and Ivie. 1 Hud. & Bro. 636.

† Grey *v.* Pearson, 6 H. L. Ca. 106.

sense of the words is to be adhered to, unless that would lead to an absurdity, or some repugnance or inconsistency with the rest of the instrument. This is laid down by Mr. Justice Burton, in a very excellent judgment, which will be found in the case of Warburton *v.* Loveland." It may be mentioned that the House of Lords, with the unanimous concurrence of the English Judges, affirmed the judgment of Mr. Justice Burton, in the same case of Warburton *v.* Ivie, in which this canon was enunciated, and disaffirmed that of Chief Justice Bushe and Lord Plunket.

Judge Burton retired from the bench in 1847, full of years, and with the respect of all men who could appreciate a perfect judge. He perhaps lingered on the bench too long, and when his mental vigour was somewhat spent. The evening of his life was not as serene and unclouded as might have been wished; the independent fortune he had acquired by his successful practice and prudent management had been wasted by others; and in his old age he found himself annoyed, if not embarrassed, by improvidence with which he had little sympathy, or, perhaps, concurrence. He died A. D. 1848, at the age of eighty-seven years.

Mr. Justice Burton is still remembered by the Irish

bar as well as by the House of Lords, as an accomplished lawyer and judge, combining with native talent, integrity and impartiality, the necessary adjuncts of conscientious industry, ample learning, serenity of temper, and unwearied patience in watching the progress of each case from its commencement to its close, and scrupulous care in considering, preparing, and canvassing with his colleagues the judgment he was about to pronounce or take part in.

Nothwithstanding his early association and friendship with John Philpot Curran, Mr. Burton was a moderate Tory in creed, whilst in practice he was nothing of a party man. He had never solicited the sweet voices of any pure and independent constituency in order to qualify for the judgment seat. He lived at a time —now unfortunately passed away—when there were other approaches to the bench than the Chapel of St. Stephens. Like Saurin, Joy, Bushe, and the two Pennefathers, Blackburne, Greene, and others no less distinguished, he had never been a Member of Parliament. Lord Redesdale, writing in 1807, expresses regret that even Mr. Plunket had been prevailed upon to take a seat in Parliament, from which it was the Lord Chancellor's particular wish that the Law Officers of the Crown in Ireland should be exempted,

as being "highly injurious to the individuals, and tending to make the bar of Ireland a field for political interest, and to render promotion the reward of political service, instead of being the reward of those professional labours which best qualify men for the highest legal situations."* But if Lord Redesdale had lived to the present day, what would he have seen?

Since the time of the Reform Bill (1831), it appears to be the next thing to an impossibility to reach the Irish bench except through the portals of the English House of Commons. Since then more than three-fourths of the vacant seats on the bench in Ireland have been allotted to members of Parliament; and in this respect certainly, whatever else may have been the social or political advantages of the Reform Bill, it has not improved the position or independence of the Irish bar, but has subjected them more and more to the influence of the popular voice, making—after the American fashion—a popular constituency's choice—nearly indispensable to the aspiring lawyer—and a diploma in politics, a necessary qualification for the bench. It has subjected the members of an honourable and learned profession to most unfair and injurious conditions; to an ordeal troublesome, costly, and mostly

* See Life of Lord Plunket, vol. i. p. 225.

uncongenial to their natural habits and tastes; familiarizing them with the not over-scrupulous practices of the political canvass; possibly with the rioting, excesses, and corruption of the hustings and polling booths, and afterwards with the entanglements and distractions of parliamentary life. Many men of learning and delicacy of sentiment—men of the type of Burton and Wensleydale, not to mention living illustrations—may shrink back from encountering all this, and may rather suffer their chance of promotion to be hindered and restricted to the merest accident, or the rare and occasional acknowledgment of pre-eminent talent, which leaders of political factions are not the most competent to discover, or the quickest to reward.

It is said that the bar cannot help this, for the Government will only give place and honour to men with parliamentary titles. The Government require their law officers, or at least one of them, to be in Parliament, and those who bear the heat and burthen of the day are naturally entitled to the first fruits of the harvest. It may, to a certain extent, be true that the Government do require to have their chief law officer in Parliament, but this cannot account for the wholly disproportionate amount of influence attributed to the

parliamentary qualification in Ireland as compared with England or Scotland—that eleven out of twelve of the seats on the Irish Common Law Bench have been conferred on members of Parliament, whilst in England not more than one-half, and in Scotland not more than one-third have been so bestowed. In England and Scotland the Attorney-General and Lord Advocate enter Parliament with a sort of understanding not to claim any vacancy but in the chief places, to be content with the *spolia opima* of the profession, leaving the Puisne Judgeships for the general bar; in Ireland this rule has been, since the Reform Bill, hardly observed, and where a vacancy occurs in any of the twenty-one Judgeships in Ireland, the general bar are practically excluded from a competition, confined almost to the fortunate few who have accomplished the feat of a successful election. The consequence is, that whoever happens to be law officer for the time being, must be placed in the vacant seat, whether it be in Chancery or Common Law, or elsewhere, so that a Law man may be tossed into Equity, and an Equity man, who never saw an indictment, may be flung on circuit to try prisoners.

In this sacrifice of the learning and independence of the Irish bar to the exigencies of party, the Government of England have much to answer for; and, after

all, what do they gain in return? So long as the Attorney-General was content to wait the vacancy of the two or three Chief Judgeships, the Government might reckon on something like a reasonable term of service at his hands, lasting probably for years, so that he who advised and framed important legal measures would be forthcoming to explain and justify them, or to modify and adapt them to the changes required in Parliament; but now the field of promotion has been practically enlarged sevenfold, the law officer may be changed more than once in the course of a session, and all his special knowledge and competency purchased at such a cost lost to those who depended on his assistance; so that virtually the Government might conduct their affairs vastly better through a Chief Secretary of ordinary intelligence, with competent legal assessors, than by relying on aid so evanescent and uncertain.

The Government are doubtless anxious to select their law officers from the ablest men at their command, and in this way the bench may happen to be recruited, and usually is, from the foremost members of the bar, but this may fail, inasmuch as the Government have no boroughs in Ireland to bestow, and their law officers, according to this pernicious theory, must find seats in Parliament as best they can; and the choice becomes

necessarily more and more hampered as the powers of capricious and turbulent constituencies are strengthened and enlarged: so that the public service and the ultimate administration of justice, may, unhappily, be suffered to devolve upon inferior men.

Upon the general education and future prospects of the Irish bar, as a learned, independent, and honourable profession, the system of selection, according to parliamentary luck, must exercise disastrous influences. The turmoil, and sometimes the disgrace, of election contests, or the excitement of political life, may be utterly distasteful to the very men who would make the most desirable judges—men of steady, industrious habits, of profound learning, of sobriety of thought, and of cool, dispassionate judgment—men who would feel themselves incompetent for the angry collisions of party warfare. Such men, in the times of Mr. Justice Burton, might have hoped that, by diligently pursuing the quiet paths in which they had attained eminent distinction at the bar, by industry, learning, and acknowledged professional superiority, they would have reached, as they would have adorned, the bench; but under the present system, all the prizes of the profession are cast into a state lottery—a seat in Parliament, and suit and service to a political party,

have become the *sine quâ non* of promotion; and if the most distinguished man at the bar, combining all the knowledge and capacity of Coke, Blackstone, and Burton, does not abandon his books and betake himself to the polling booths, to enter the lists and fight the battle of life in a very different sphere, he must expect to be thrust aside by barristers who, by good luck, by dexterity, or adroitness, or more questionable practices, have reached the favoured enclosure of Parliament, and see them elevated over his head, and placed in the seat of judgment supposed to be reserved for discreet and learned men, of profound knowledge and steady industry, possessing the respect of the profession, and the confidence of the public, and governed in all they do by a conscientious sense of the dignity and gravity of the duties they are called upon to discharge, and of their accountability to the Supreme Judge of all.

Let us hope that a real reform, either in Parliament or in the system of political government, may save the profession and the public from such lamentable results in the future as my imagination may have somewhat too hastily foreboded.

THE IRISH EXCHEQUER AS IT WAS IN 1829.

"Does the Chief sit at Nisi Prius to-day?" is anxiously asked by every lover of judicial drollery, and dry sarcastic humour. The appearance of his lordship's fashionable registrar, Mr. Carew O'Grady, is hailed as a favourable omen; and the invariable consequence of his official announcement of the Lord Chief Baron, is a crowded court. This cannot be considered surprising, when it is remembered, that the merriment of the Common Pleas, long the powerful rival of the Exchequer, has been suddenly silenced by the removal of the punning Norbury, and the appointment of the grave Lord Plunket as his successor. Chief Baron O'Grady* exhibits a striking contrast to each of these noble peers; and yet, in some measure, combines in his person the distinguishing peculiarities of both: he possesses the masculine understanding of Lord Plunket, the humour of Lord Norbury, combined with an ironical turn of dis-

* Afterwards Viscount Guillamore.—Ed.

position, and bitterness of wit, entirely his own. A person, but indifferently skilled in the art of physiognomy, might, from his countenance, form a tolerably accurate judgment as to his temper and character: there is nothing pleasing or graceful in his appearance; a sardonic sneer generally plays about his lips, indicative of a scornful disposition; and, while expressing his opinion, which he does in a churlish strain, the tone of his voice, dry and measured, and somewhat tinctured and enriched with the southern brogue, strikes gratingly on the ear. Cynicism, it may be fairly concluded, constitutes the most prominent feature of his character. He seems to have laid it down as a rule, from which it would be criminal in the extreme to deviate, never to suffer an opportunity of saying a severe thing to escape; no matter how galling it may be to the feelings of the person against whom it is aimed. This cruel propensity renders him no great favourite with the junior bar, towards whom his manner is not unfrequently discouraging and repulsive. I heard his lordship, when a young barrister had resumed his seat, after having with praise-worthy zeal for his client, laboured for two good hours to convince the Court, observe, in his customary drawling and uncourteous style, "Well, Sir, all that may be very fine,

but I confess I cannot understand it." In this point of view he is no respecter of persons, as the following anecdotes will sufficiently demonstrate. Mr. Crampton,* K. C., having in a law argument, cited "Palgrave's case," with confidence, and relied upon it with great emphasis, the Chief Baron observed, with his usual politeness, "Mr. Crampton, you have taken that case from some abridgment; Palgrave was neither the plaintiff nor the defendant, but the lawyer who conducted the cause, and, who was remarkable for nothing but his ignorance; hence it was called Palgrave's case; and, I dare say, if ever this case should be cited hereafter as a precedent, it will be known by the appellation of Crampton's case." A scene, which occurred with a different sort of person deserves to be commemorated:—Sir William Stamer, a portly, consequential alderman, of the venerated corporation of Dublin, a magistrate, and terror of all evil doers, when sitting as foreman of a jury, interrupted the Chief Baron, at a critical moment, by vehemently protesting he could no longer endure the intensity of the cold, and begging permission to wear his hat; his lordship, casting an

* Afterwards the Honble. Justice Crampton, a highly distinguished scholar, a Fellow of Trinity College, Dublin, and Professor of Common Law in that University. He was a most learned, acute, and efficient judge, and retired from the bench, A.D., 1859.—(EDITOR).

affectedly sympathizing glance on the half frozen baronet, dryly replied, "Sir William it is not usual for gentlemen to wear their *hats* in courts of justice, but, if a *wig* would answer, I am sure the members of the bar will kindly accommodate you with a good fit." The alderman sat down confounded and abashed.

There is a class of shabby lawyers in Dublin, whose practice is exclusively confined to the defence of criminals, at Green-street, the Irish Old Bailey; these gentlemen are sometimes clamorous and contumacious; the Chief Baron, however, has the happy knack of bringing them to a proper sense of their situation. One of these barristers having on the trial of a pickpocket, been employed as counsel for the prosecution, for lack of any other, assumed on the occasion an imperious air, took special care to reiterate loudly and frequently, for the information of his lordship, that he was counsel for the Crown; the Chief Baron bore this patiently for a time, till at last, provoked by his pertinacity, when the pompous little gentleman, elated with the unwonted honour, again exclaimed, he was counsel for the Crown; his lordship kindly remarked, "Yes, sir, and I believe sometimes for the half crown too." When presiding lately in the town of Mullingar, in the Criminal Court, two culprits were put on their trial for an atrocious

burglary; a flaw being discovered in the indictment, an acquittal was directed; when the fussy counsellor, before alluded to, proud of his display of forensic skill, confidently demanded of his lordship to discharge his injured clients from the dock: "Oh, thank you Mr. B——l," cried the sagacious chief, "you will allow me, if you please, to get half an hour's start of your clients out of the town."

Whether the question for the Crown be simple or abstruse, he never fails to enliven it by cutting sarcasms, and occasional ebullitions of what is vulgarly called *slang;* at the same time more clearly understanding, and thoroughly appreciating, the merits of the case before him, than many a more solemn and stately functionary. No judge on the bench can try a complicated record with more ease to himself, or advantage to the litigants, than Chief Baron O'Grady; his legal knowledge, accompanied with great natural shrewdness and penetration, and a perfect acquaintance with character, from the highest to the lowest station, give him in certain cases a decided superiority over the generality of the Irish bench. Be the mass of evidence adduced ever so intricate, inconsistent, or confused, almost intuitively he understands its various bearings, can analyze and condense it, disencumber the subject of whatever is unimportant or perplexing, and give a lucid

exposition of the case to the minds of a bewildered jury. While he instructs he seldom encroaches on their peculiar province; and if the question for their decision relate merely to matters of fact, disconnected from the niceties of law, he generally sends the issue to the jury without any lengthy comment, and thus his charges, usually brief, always perspicuous and precise, rarely afford grounds for a motion to set aside the verdict from the misdirection of the judge. The following are curious instances of the brevity of his charges. On the trial of a criminal for stealing stockings, several witnesses deposed to his good character; after which his lordship charged the jury in this concise and rather comic strain: "Gentlemen of the Jury, here is a most respectable young man, with an excellent character, who has stolen twelve pair of stockings, and you will find accordingly." I will exemplify the peculiar manner of this extraordinary but able Judge, by one more anecdote. Upon the trial of a recent action for debt, to which the defendant had pleaded as a set-off, a promissory note of somewhat long-standing, and an old broken-down gig, with which he had furnished the plaintiff, the following charge was spoken with infinite gravity, by the learned Chief Baron:—"Gentlemen of the Jury, this is an action for debt, to which the defen-

dant has pleaded as a set-off, two things;—a promissory note, which has a long time to run,—and a gig, which has but a short time to run! The case seems clear,—you may find for the plaintiff." While the wily facetiousness of his temper must be admitted, it cannot be said he is equally distinguished for the courtly elegance of his manners. He is at all times unceremonious or rather uncouth in his behaviour; not only to the bar, but even to his brethren on the bench; and on a recent occasion, he treated his brother Smith in a coarse, irreverent strain, which displayed but little of the scholar, and less of that lofty deportment and calm forbearance which should at all times mark the conduct, as well of the gentleman as of the judge.

The personage next in importance to the Chief in this Court is Sir William Smith, who, as though his thoughts were employed on higher and nobler subjects, sits for the most part sedate and silent; rarely, throughout the term, deigning to notice any of the common cases, which engage the attention of the bench; and, when he does chance to drop a few oracular words, it is with all the brevity of his brother O'Grady, but without any of his acrimony. In his youth, Baron Smith was no undistinguished member of the defunct Irish Parliament, and for many years steadily sup-

ported the enlightened measures, which, it was hoped, would redeem and invigorate his country: his enemies declare that, finding the cause of the Opposition hopeless, and being too prudent to adhere with desperate fidelity to a sinking party, he joined the Ministry and voted for the Union; yet I rather incline to the opinion that he supported that measure, from an honest conviction of its utility and wisdom. Immediately after the Union he was elevated to the bench, his father being at the time Master of the Rolls; a singular and unusual coincidence.* His judicial decisions, not technical, and occasionally luminous, are worth perusing; they have been long admired for their polished composition, and for the grasp of thought which they display; combining the logic of the lawyer with the graces of the scholar, and distinguished for the judicious application of general and philosophic principles: his celebrated decision on Judge Johnson's case deserves the commendations bestowed on it, for it breathes the spirit of liberty and of reason. His habits on circuit are productive of considerable annoyance to the public, and to the profession; it is, in general, far advanced in the day

* To make the coincidence the greater, the son of the same Sir William became afterwards Master of the Rolls (the late Right Hon. T. B. C. Smith), and a most excellent and able judge, so that Sir William had both a father and a son Master of the Rolls.—(Editor).

before he takes his seat on the bench, and then he prolongs his sitting to a very late hour at night, in the discharge of his duties. While he presides, gravity and decorum pervade the Court; the slightest violation of the dignity of the bench is sure to incur his heaviest displeasure. A humorous instance of this occurred with a jury, of which Ex-Judge Day happened to be the foreman. At a late hour in the evening, the members of the Grand Jury retired to dine with the High Sheriff, conceiving his Lordship could have no further occasion for their services. Shortly after he asked for the jury; and, on being informed that they had left Court, expressed his displeasure at their conduct, and commanded that they should be instantly summoned. Messengers were dispatched to the High Sheriff's, where the party were just seated at dinner. Ex-Judge Day arose with alacrity, declaring he felt anxious to evince his respect for that bench, of which he had himself been once a member. The jury reached the court-house in breathless haste. When assembled in the box, ready to receive his Lordship's commands, he politely observed, "Gentlemen, I dismiss you for the night." A breach of respect of a different character he thus punished: A country magistrate, defendant in an action for

false imprisonment, accompanied with many aggravating circumstances, seated during the trial opposite Baron Smith, amused himself by laughing loudly, whenever any fresh fact was proved against him. At last a magisterial act of his, peculiar for its impropriety, being sworn to, he laughed more immoderately than ever. Incensed at his impertinent behaviour, his Lordship, bending over the bench, observed: "Since, Sir, reflection on your guilty actions disposes you to merriment, I congratulate you on having within your own person an everlasting source of entertainment."

As a criminal judge, Sir William Smith is sparing of human life, and merciful, even to a fault. He is a man of the nicest sympathies and perceptions; and, though sometimes mistaken in his judgment, yet his errors should be pardoned, because they spring from a compassionate disposition, and from a tender, forgiving heart. In consequence of this failing, Baron Smith, it is reported, has been considered unfit for certain circuits, which have been, therefore, consigned to the management of those whose hearts are made of sterner stuff. In him the trembling, undefended culprit is sure to find a friend, who, though anxious for justice, is willing to save. It is rumoured that he will shortly retire from public life. When that event occurs, the bench of

Ireland will have lost one of its brightest ornaments; the public, an able and impartial judge; the unfortunate and oppressed, a zealous, disinterested, and powerful defender.

I cannot refrain from hazarding a few remarks on a character which, if not as distinguished or exalted as those to whom allusion has been already made, is, at least, curious and singular. This person is none other than Mr. Fleetwood, registrar to Baron Smith, better known by the familiar appellation of Charley Fleetwood. Regular in his habits, and methodical in his motions, he makes his appearance in Court at the usual hour every morning during term, and, having drawn the curtains round the judges, he entrenches himself in a little wooden box, which is raised to nearly the same level with the bench, carefully deposits on his desk the precious contents of his black bag, cautiously arranges his spectacles, and having provided himself with a formidable pen, is prepared for the business of the day. When thus adjusted and equipped, his appearance is perfectly unique. Imagine a starched and fleshless mortal, perched in a narrow elevated wooden box, his countenance inanimate, yet indicative of subtlety, his features of that rugged, unalterable cast, which may safely bid defiance

to the work of time; small grey eyes, ensconced behind a pair of ancient green spectacles, which rest securely in a little cavity, formed by nature on the bridge of anything but a Roman nose; his cautious forehead shaded by a common curl-less bag-wig, which has sheltered its contented proprietor for the last half-century. A scanty gown, emblematic of his office, is suspended from his contracted shoulders; originally it may have been black, but the ruthless hand of time, though powerless on the owner, has changed the colour of the robe to a russet brown. The most dazzling eloquence, or pungent wit, could not attract his attention for an instant. The brilliant images of Shiel, the chaste and classic elocution of North, are alike lost on him—there he sits, equally insensible to the energy of the one and the gracefulness of the other. His emotions seem deadened within him; it is true, the appearance of an attorney with an affidavit has a magic charm to rouse him from his apathy; but it is only by the talismanic touch of silver that he is completely quickened into life. The junior barristers, not encumbered with briefs, in their efforts to dispel reflection, or while away the day, have, disrespectfully enough, made poor Charley the topic of their mirth and the exercise of their imagination. The difficulty among them is to

discover, to what in the heavens above, in the earth beneath, or in the waters under the earth, Charley can with propriety be compared. He has been successively likened to patience on a monument; to the hungry scribe, depicted by Scott; to an antique which, having reposed for centuries in a niche in some old baronial residence, has been removed, together with its receptacle, and planted in an appropriate corner of the Exchequer Court, at the earnest solicitation of the joke-loving Chief Baron. A travelled barrister asserts he has seen a figure, something like Fleetwood, in one of the museums on the Continent, which was reported to have been dug up from the ruins of Herculaneum; the figure was seated at a desk, and engaged in an ancient practice—the calculation of usury. There is a character described by Lucian, under the name of Τοκογλυφος, not unlike the ruminating registrar. He fully answers the description, as to the lank and meagre fingers; and, moreover, he has not the shadow of a leg. So much for poor Charley!—by whose oddities the jurors have been amused and entertained. Long may he flourish! The Court of Exchequer, Dublin, might better spare a better man.

The junior baron, Mr. Pennefather, is inferior to few judges on the bench in a sound and comprehensive

knowledge of the practice and principles of the law; in his manner he is very unlike some of his brethren; but yet at times he has been known to exhibit a little hauteur for the arguments, as well of a brother baron as of the less favoured members of the bar. But his admirable judicial qualities cast his infirmities into the shade. The love of business is the passion of his life. He was made for work—work without play. Other judges may look as well on paper; he shines as a thorough man of business on the bench. He sometimes sits alone, hearing law and equity motions; and then the abilities of the man appear in their perfection —quick and clear in his apprehension of facts, firm in rejecting irrelevant matter, disdaining all worthless cases, and applying principle to the facts of importance which he disentangles from all confusion. Having heard fully the case, he pronounces at once the decision, which is invariably right, and in accordance with justice.

Such is Baron Pennefather—unrivalled in a Civil Court ;—in a Criminal Court he is cautious and humane.

The last personage of the Court to be described is —the crier; in England, perhaps, considered an humble officer, from ignorance of how much might be made of

the post, if properly and judiciously filled. If any jovial judge would wish to have a humorous crier to enliven the dull hours of term, or relieve the monotony of circuit, by many a curious saying and unexpected ebullition of official wrath, at the ignorance of a witness, or the indecorum of the audience, let him dispatch an intelligent youth to acquaint himself with the habits, and treasure up the sayings of the well known crier of the Exchequer Court, Dublin; who has filled that honourable post for some score years with unexampled ability and skill. He is one of the old school, and has never accommodated himself to the depraved taste of modern times, or sought to ingratiate himself with the rising generation by laying aside his good old customs, or his good old dress. This master of his art is still attired in a dress similar to what he wore in the days of Lord Avonmore—a respectable wig, the very reverse of Charley Fleetwood's, a comfortable coat of capacious dimensions, into one of the pockets of which Charley might with ease introduce his shrivelled body; summer and winter his old-fashioned shoes are surmounted by a pair of huge silver buckles, which may have been manufactured in the days of William the Norman, polished with the most exact care, and brilliant enough to reflect the rays of the sun. He is, moreover, afflicted

with that gentlemanly complaint, the luxurious gout. A few minutes before the Chief Baron, slowly, but authoritatively, the crier ascends the steps of the Court, and, in an instant, quells any squabbles for places which may have arisen; then, entering his commodious box, placed exactly opposite Charley Fleetwood's, these two luminaries of the Court of Exchequer appear in astronomical conjunction. The chief arrives—the trial begins—the crowd gathers—the passages are choked up—the barristers impeded: then begins the crier to exert his authority in a voice which would have silenced his celebrated predecessor of the Roman forum, and which sometimes discomposes the gravity even of Charley Fleetwood himself:—"Make way there for the gentlemen of the bar; make way, I say, for King's Counsel; so, you'll not make way?—tipstaff, where are you? do your duty—call the sheriff—bailiffs, take *them* scheming fellows into custody:" mean time the progress of the trial is arrested, as it is utterly impossible that even Daniel O'Connell could be heard while this storm lasts. The Chief Baron sits most composedly; never interrupting or correcting his crier, for whose invectives he has a peculiar relish. The crier, if not promptly obeyed, rises in his wrath, and rather unceremoniously accosting the doubtful

characters by whom he is surrounded, vociferates, "Go home, you loungers; you idle, scheming, skulking fellows, have you nothing to do? Have you no business to mind? What brings you here? What do you want with law, or what do you know about it? Gentlemen, take care of your pockets." After this burst subsides, the trial is resumed, and our friend, the crier, turns round to chat with any respectable gentleman who may be near him: but, it is to be observed, he never condescends so far as to allow of familiarities from pert attorneys' clerks. When in a loquacious mood, he will recount many old stories of the bench and of the bar of forty years ago, particularly of his patron, Lord Avonmore; and how one day, in a violent fit of passion, he took off his wig, all powdered as it was, and flung it in his adversary's face—and of the fine *ould* times before the Union, when so many of the Counsellors were in Parliament—and what a fine speaker *ould* Curran was—and how like him his son Mr. William Henry Curran is, to whom he wishes all success, because he hears he is a great scholar and an author, and whom he hopes will one day be a judge, because he is his father's son. In the midst of all this olio, some forward, troublesome fellow, catches his eye; in an instant he shouts down, crying out for the tipstaff, whom he

commands "to take that suspicious-looking fellow into custody; that fellow with his mouth open, with the black beard, and no cravat, interrupting the Chief by leaning over the form."

The characters and duties of the crier, the court-keeper, and the tipstaff, have been well and happily described by the present Lord Chief Justice Bushe, when Solicitor-General, in whose words it may not be unamusing to conclude this article:—"*That* high officer, the crier, is the first, according to Lord Coke; the Court and the Chief Judge are deeply interested that he should well and truly cry, when he calls the witnesses to the book, the jurors to the box, and the plaintiff to be nonsuited; then follows the tipstaff, an important personage, who beareth a black rod, surmounted with silver, and chaseth away the idle boys; and last appears the court-keeper, a comely matron, belonging, by the statute of Westminster, exclusively to the Chief Baron, and to whom no junior Baron can lay claim, unless when my Lord is out of town. And she too is appointed by reasonableness of the Common Law, because, as Lord Coke says, 'The law doth ever appoint those that have the greatest skill and knowledge to perform that which is be done.'"

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HISTORICAL AND LITERARY.

BY THE

RIGHT HON. JAMES WHITESIDE, LL.D., &c.
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CONTENTS.

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